

CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 676

HORTON C. RORICK, PETITIONER,

vs.

DEVON SYNDICATE, LIMITED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 13, 1939.

CERTIORARI GRANTED MARCH 27, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 676

HORTON C. RORICK, PETITIONER,

vs.

DEVON SYNDICATE, LIMITED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT

INDEX

	Page
Record from D. C. U. S., Northern District of Ohio.....	1
"Caption	1
Record from Court of Common Pleas of Lucas County.....	2
Caption	2
Petition	2
Affidavit in attachment.....	6
Praecipe for summons.....	7
Summons and sheriff's return	8
Order of attachment	9
Sheriff's return.....	9
Notice to garnishee	10
Sheriff's return	11
Affidavit in attachment	12
Notice to garnishee	13
Sheriff's return	14
Affidavit for constructive service.....	15
Legal notice	16
Proof of publication	17
Notice of removal.....	17
Petition for removal	18
Bond on removal	21
Affidavit	22
Motion for removal.....	23
Journal entry of removal	23
Certificate of common pleas record.....	24

Record from D. C. U. S., Northern District of Ohio—Continued	
Answer of the Spitzer-Rorick Trust & Savings Bank, garnishee	25
Motion for order quashing service, etc.	26
Order granting leave to file supplemental petition	27
Supplemental and amended petition	29
Praecipe for summons	32
Supplemental affidavit in garnishment	33
Return of the marshal	36
Order of attachment	37
Notices to garnishee	38
Motion for order quashing service, etc.	43
Supplemental answer of The Spitzer-Rorick Trust & Savings Bank as Garnishee	44
Memorandum opinion, Hahn, J.	47
Journal entry of judgment	50
Orders extending time	52
Petition for appeal	53
Assignment of errors	54
Order allowing appeal	56
Appeal bond	57
Citation on appeal	58
Affidavit of service of citation on appeal	59
Citation on appeal	60
Plaintiff's narrative bill of exceptions	61
Caption	61
Testimony of Dennis W. Drennan	61
Order approving narrative bill of exceptions	65
Order extending time	66
Affidavit of Paris E. Singer in support of motion of Devon Syndicate, Limited	66
Exhibit E—Notes	71
Exhibit F—Letter, Spitzer Rorick & Co. to Devon Syndicate, Ltd.	74
Exhibit G—Assignment	74
Exhibit H—Assignment	78
Exhibit J—Letter of protest	80
Letters patent	81
Affidavit of Wendell H. Laidley	84
Affidavit for constructive service	85
Law summons on supplemental and amended petition	86
Praecipe for transcript on appeal	87
Counter praecipe	88
Certificate of clerk	91
Proceedings in U. S. C. C. A., Sixth Circuit	93
Minute entry of argument and submission	93
Judgment	93
Opinion, Simons, J.	94
Clerk's certificate	99
Order allowing certiorari	99

**IN THE
United States Circuit Court of Appeals
FOR THE SIXTH CIRCUIT**

No.....

HORTON C. RORICK,

Appellant,

vs.

DEVON SYNDICATE, LTD., AND PARIS E. SINGER,

Appellees.

**Appeal from the United States District Court for the
Northern District of Ohio, Western Division**

**TRANSCRIPT OF RECORD
TRIAL PLEADINGS AND TESTIMONY**

FRASER, EFFLER, SHUMAKER & WINN,
700 Home Bank Bldg., Toledo, Ohio,
Attorneys for Horton C. Rorick, Appellant.

WELLES, KELSEY & COBOURN,
807 Ohio Bank Bldg., Toledo, Ohio, and
MILLER, OWEN, OTIS & BAILLY,
15 Broad St., New York, New York,
*Attorneys for Devon Syndicate, Ltd.,
and Paris E. Singer, Appellees.*

**IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION.**

CAPTION

United States of America;
Northern District of Ohio, Western Division, ss.

Record of the proceedings of the District Court of the United States within and for the Western Division of the Northern District of Ohio, in the cause and matter hereinafter stated, the same being finally disposed of at a regular term of said court begun and held at the City of Toledo, in said district, on the last Tuesday in April, being the 28th day of said month in the year of our Lord One Thousand Nine Hundred and Thirty-six, and of the Independence of the United States of America the One Hundred and Sixty-first, to-wit: on Saturday, the 11th day of July, A. D. 1936.

Present: Honorable George P. Hahn, United States District Judge.

No. 3711 At Law

Horton C. Rorick

vs.

Devon Syndicate, Ltd., and Paris E. Singer.

Said action was commenced on the 30th day of December, A. D. 1930, and proceeded to final disposition at the term and day above written, and during the progress thereof, pleadings and papers were filed, process was issued and returned, and orders of the court were made and entered in the order and on the dates hereinafter stated, to-wit:

*Certified Copy of Record***CERTIFIED COPY OF RECORD**

(Filed Dec. 30, 1930)

Pleas before the Court of Common Pleas within and for the County of Lucas and State of Ohio, at a term thereof begun and held at the Court House in the City of Toledo, on Monday, the 22nd day of September, in the year of our Lord One Thousand Nine Hundred and Thirty.

Present: Honorable James S. Martin, Honorable James Austin, Jr., Honorable Charles M. Milroy, Honorable Roy R. Stuart, Honorable Charles H. Lemmon, Honorable Robert G. Gosline, Presiding Judges.

Be it remembered, that heretofore, to-wit: On the 19th day of June, A. D. 1930, plaintiff, by his attorneys, filed in said court a petition in the above entitled cause, which petition is in the words and figures as follows. to-wit:

**IN THE COMMON PLEAS COURT OF LUCAS
COUNTY, OHIO**

No. 121340

Horton C. Rorick,

Plaintiff,

vs.

Devon Syndicate, Ltd., and Paris E. Singer,
Defendants.

PETITION

For his cause of action herein, plaintiff says that the defendant, Devon Syndicate, Ltd., is a corporation organized and existing under the laws of the Province of Quebec in the Dominion of Canada, having its principal office in the Transportation Building in the City of Montreal, Province of Quebec, Dominion of Canada; that the defendant, Paris E. Singer, is a non-resident of the State of Ohio; that prior to January 1, 1926, he caused to be incorporated said defendant, Devon Syndicate, Ltd., and transferred to said corporation, a large portion of his assets; that he owns or controls all of the capital stock of the corporation, Devon Syndicate, Ltd., and is president and managing officer thereof.

Certified Copy of Record

Plaintiff says that the said Paris E. Singer, either through his ownership or control of all of the stock of Devon Syndicate, Ltd., is and has been, and was at the times hereinafter referred to, in actual control of various corporations, among them, the Palm Beach Ocean Realty Company; the Ocean and Lake Realty Company; Everglades Club Hotel and Apartment Company; and The Highland Glades Farms Company; and the said Paris E. Singer is, and was at the times hereinafter complained of, very heavily interested in all of said corporations.

On or about April 8, 1926, the defendant, Paris E. Singer, made a written contract with the plaintiff wherein and whereby this plaintiff continued to be employed by said Singer for the calendar years 1926 and '27, as financial adviser for the said Singer, and for all of the corporations controlled by the said Singer, including Devon Syndicate, Ltd., Palm Beach Realty Company, The Ocean and Lake Realty Company, Everglades Club Hotel and Apartment Company, and The Highland Glades Farms Company, and under and by virtue of the terms of said agreement, which was accepted by the plaintiff, it was provided that the services to be rendered by the plaintiff would largely be of an advisory nature, and they were not in any way conflict with plaintiff's duty as a partner in Spitzer Rorick and Company; and it was also agreed that the amount of compensation to be paid plaintiff should be fixed exclusively by the plaintiff, and the defendant, Singer, agreed to pay whatever amount was fixed by plaintiff with the limitation that the charge should not exceed Fifty Thousand Dollars per year and expenses for the calendar years 1926 and 1927.

Plaintiff says he accepted said contract and entered upon the performance of said duties, and it was then discovered by both parties that the services rendered and to be rendered were of vastly greater extent and value than was contemplated by either party at the time of the making of the contract of April 8, 1926; that plaintiff and defendant, Singer, thereupon and shortly thereafter agreed that plaintiff should assume and perform the additional duties requested by the defendant, Singer, and the contract made on April 8, 1926, was modified to the extent that the limitation of Fifty Thousand Dollars per year was expressly removed, and it was agreed that no limitation would be placed upon the value of the services to be rendered, and that plaintiff should and would have the right to fix the value of the services, and the amount of compensation to be paid, and defendant, Singer,

Certified Copy of Record

agreed that said compensation as fixed by plaintiff would be paid to plaintiff.

Plaintiff says that the defendant, Devon Syndicate, Ltd., in the month of August, 1926, agreed with the plaintiff that it would join with the defendant, Singer, in the employment and compensation to be paid to plaintiff for the services rendered, and to be rendered as aforesaid, and on or about March 12, 1927, the defendant, Devon Syndicate, Ltd., ratified and approved said contract in writing, and upon said day, in writing, in consideration of services already rendered and to be rendered by the plaintiff to said defendants and to affiliated corporations hereinbefore named, and other corporations owned and controlled by Devon Syndicate, Ltd., agreed that it would pay to the plaintiff for services whatever amount the plaintiff should fix as the value thereof, and in such amounts and on such dates as in the sole discretion of the plaintiff would be fixed. It was the intent of the plaintiff and the defendants that the services rendered and to be rendered by the plaintiff referred to in both of said written contracts would be the same services and would be rendered to the said defendants, and all of the interests or corporations owned or controlled by the defendants.

Plaintiff says that following the expiration of the year 1927, he continued performing the same services for the defendants as aforesaid, by and with their full consent and approval down to the 12th day of June, 1930, at which time he resigned; that during all of said time, down to the 12th day of June, 1930, plaintiff fully performed his contracts, and rendered services as financial adviser and otherwise in connection with the properties aforesaid to the full satisfaction and approval of the defendants; that during the period of employment and down to the time of his resignation, plaintiff devoted a very large amount of time to the work involved, and handled assets of the defendants estimated by them to be of more than Twenty Million Dollars in value, and by reason of his efforts, the properties of the defendants and the other corporations which were intricately involved, were largely saved for the defendants, and the other interested corporations, and his services, during all of said time, were accepted by the defendants and by them in every way, ratified, confirmed and approved.

Plaintiff says that acting under the provisions of his contracts aforesaid, he has fixed the value of his services rendered under his employment in the amount of Four

Certified Copy of Record

expenses and credits received by plaintiff in connection with the performance of his duties under said contracts, and there is due him by virtue of said contracts of employment, the sum of Four Hundred Thousand (\$400,000.00) Dollars, together with interest at six per cent (6%) per annum from the 12th day of June, 1930. Said services did not include any services rendered as a partner of Spitzer Rorick and Company or as an officer of The Spitzer Rorick Trust and Savings Bank.

Wherefore, plaintiff prays judgment against said defendants for the sum of Four Hundred Thousand (\$400,000.00) Dollars with interest thereon at the rate of six per cent (6%) per annum from the 12th day of June, 1930.

William Roberts,
Fraser, Hiatt, Wall & Effler,
Attorneys for Plaintiff.

State of Ohio, County of Lucas, ss.

Horton C. Rorick, being first duly sworn, says that he is the plaintiff in the above entitled action; that he has read the foregoing petition and the allegations contained therein are true as he believes.

Horton C. Rorick.

Sworn to before me and subscribed in my presence, this 19th day of June, 1930.

(Seal) L. A. Wilhelm,
Notary Public, Lucas County, Ohio.

My commission expires May 1, 1931.

Certified Copy of Record

On the 19th day of June, 1930, there was filed in said court an affidavit in attachment and garnishment in the above entitled cause, which affidavit is in the words and figures as follows, to-wit:

COURT OF COMMON PLEAS
AFFIDAVIT IN ATTACHMENT AND
GARNISHMENT

State of Ohio, County of Lucas, ss.

Horton C. Rorick, being first duly sworn, says that he is the plaintiff in the above captioned suit; that he has commenced a civil action in the Court of Common Pleas of Lucas County, Ohio, against Devon Syndicate, Ltd., a corporation, and Paris E. Singer, on a debt arising upon contract, the same being an action to recover from defendants certain moneys due and owing to plaintiff on, under and by virtue of certain contracts between plaintiff and defendants, and the breach and refusal to perform thereof by defendants; that said claim is just and that plaintiff should recover thereon the sum of Four Hundred Thousand Dollars (\$400,000.00) with interest at the rate of six per cent (6%) per annum from June 12, 1930.

Affiant further says that he has good reason to believe that The Spitzer Rorick Trust & Savings Bank, a banking corporation of Toledo, The Spitzer Rorick Trust & Savings Bank and Horton C. Rorick as Trustees, The Everglades Club Company and The Blue Heron Land Company have moneys, property and assets of defendants, Devon Syndicate, Ltd., and Paris E. Singer, in their possession and control, due and payable, or to become due and payable to said defendants and that the said The Spitzer Rorick Trust & Savings Bank, a banking corporation of Toledo, The Spitzer Rorick Trust & Savings Bank and Horton C. Rorick as Trustees, The Everglades Club Company and The Blue Heron Land Company should receive notice of garnishment herein.

Affiant further says that the defendant, Devon Syndicate, Ltd., a corporation, is a foreign corporation organized under the laws of the Province of Quebec in the Dominion of Canada; that it is not for any reason, statutory or otherwise, exempted from attachment; that it has not filed with the Secretary of State of the State of Ohio a statement required by General Code, Section 183, nor procured from said Secretary of State the certificate provided for by General Code, Section 178; that it is not

Certified Copy of Record

within the exceptions contained in Division 1 of the General Code, Section 11819, nor was it at the time of the occurrences referred to in the petition in this case, nor is it now qualified by law to do business in the State of Ohio; that the defendant, Paris E. Singer, is not a resident of this state and cannot be served with summons in this state; and that the facts set forth in this affidavit are true.

Horton C. Rorick.

Sworn to before me and subscribed in my presence this 19th day of June, 1930.

(Seal) D. W. Drennan,
Notary Public, Lucas County, Ohio.
My commission expires Aug. 9, 1930.

Endorsed on said petition and filed therewith was a praecipe for summons, order of attachment and notice to garnishee in said cause, which praecipe is in the words and figures as follows, to-wit:

PRAECIPE

To the Clerk:

Please issue summons in the above entitled action for the defendants, addressed to the sheriff of Lucas County, Ohio, returnable according to law, endorsed: "Amount claimed, Four Hundred Thousand (\$400,000.00) Dollars with interest at 6% per annum from June 12th, 1930."

Also issue order of garnishment and attachment addressed to the sheriff of Lucas County, Ohio, to be served upon The Spitzer Rorick Trust and Savings Bank, Nicholas Building, Toledo, Ohio; Horton C. Rorick and The Spitzer Rorick Trust and Savings Bank, Trustees, Nicholas Building, Toledo, Ohio; The Everglades Club Company, Nicholas Building, Toledo, Ohio; and The Blue Heron Land Company, Nicholas Building, Toledo, Ohio, commanding each of said persons and corporations to answer concerning monies, properties and other assets in their hands or under their control belonging to the defendants, Devon Syndicate, Ltd., and/or Paris E. Singer.

Fraser, Hiatt, Wall & Effler,
William Roberts,

Attorneys for Plaintiff.

Certified Copy of Record

Thereupon a summons in said cause was issued by the clerk of said court, which summons is in the words and figures as follows, to-wit:

The State of Ohio, Lucas County, ss.

To the Sheriff of Lucas County:

You are commanded to notify Devon Syndicate, Ltd., and Paris E. Singer, that they have been sued by Horton C. Rorick in the Court of Common Pleas of Lucas County, and that unless they answer by the 19th day of July, 1930, the petition of said plaintiff against them filed in the clerk's office of the said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 30th day of June, A. D. 1930.

Witness, Geo. E. Hardy, clerk of our said court, and the seal thereof hereto affixed, at Toledo, this 19th day of June, A. D. 1930.

Geo. E. Hardy, Clerk,

(Seal)

By M. E. Theuerkauff, Deputy.

Said summons was endorsed as follows, to-wit: Summons in action for amount claimed, Four Hundred Thousand (\$400,000.00) Dollars with interest at 6% per annum from June 12th, 1930.

William Roberts,

Fraser, Hiett, Wall & Effler,

Attorneys for Plaintiff.

On the 30th day of June, 1930, said summons was filed with the sheriff's return thereon written as follows, to-wit:

The State of Ohio, Lucas County, ss.

Received this writ June 19th, 1930, the within named defendants Devon Syndicate, Ltd., and Paris E. Singer could not be found by me in Lucas County, Ohio.

Joseph Zimmerman, Sheriff,

G. Levy, Deputy.

Certified Copy of Record

Thereupon an order of attachment in said cause was issued by the clerk of said court, which order of attachment is in the words and figures as follows, to-wit:

The State of Ohio, Lucas County.

To the Sheriff of Lucas County, Greeting:

You are hereby commanded to attach and safely keep the Lands, Tenements, Goods, Chattels, Stocks, or interest in Stocks, Rights, Credits, Moneys and Effects, in your county, of Devon Syndicate, Ltd., and Paris E. Singer not exempt by law from being applied to the payment of the claim of the plaintiff Horton C. Rorick or so much thereof as will satisfy plaintiff's claim for Four Hundred Thousand Dollars (\$400,000.00) with interest at the rate of six per cent (6%) per annum from June 12, 1930; and also for Fifty Dollars, the probable costs of this action.

And that you make due return of this order on the 30th day of June, A. D. 1930.

Witness, Geo. E. Hardy, clerk of the Court of Common Pleas of said County of Lucas, this 19th day of June, A. D. 1930.

Geo. E. Hardy, Clerk,

(Seal)

By M. E. Theuerkauff, Deputy Clerk.

On the 23rd day of June, 1930, said order of attachment was filed with the sheriff's return thereon written as follows, to-wit:

OFFICE SHERIFF LUCAS COUNTY, OHIO

Sheriff's Fees

Service75
 Mileage16

 .91

Received this writ June 19, 1930, and there being no goods or chattels, lands or tenements found by me in Lucas County, Ohio, belonging to the within named Devon Syndicate, Ltd., et al., on which to levy, this writ is hereby returned, no money made, not satisfied.

Joseph Zimmerman, Sheriff,

By C. H. Kohne, Deputy.

Certified Copy of Record

Thereupon a notice to garnishee in said cause was issued by the clerk of said court, which notice to garnishee is in the words and figures as follows, to-wit:

NOTICE TO GARNISHEE

State of Ohio, Lucas County, ss.

To the Sheriff of Said County, Greeting:

We command you to notify The Spitzer Rorick Trust and Savings Bank, Horton C. Rorick, The Spitzer Rorick Trust and Savings Bank, Trustees, The Everglades Club Company and The Blue Heron Land Company, to appear before the Honorable Court of Common Pleas of said county at the Court House in Toledo, on or before the 19th day of July, A. D. 1930, and answer, under oath, all questions put to them touching the property of every description, and credits, of the defendants Devon Syndicate, Ltd., and Paris E. Singer in their possession, or under their control, and they shall disclose truly the amount owing by them to said defendants, whether due or not.

The sheriff will make due return of this writ on the 30th day of June, A. D. 1930.

Witness my hand and the seal of said court, this 19th day of June, A. D. 1930.

Geo. E. Hardy,
Clerk of the Court of Common Pleas of
Lucas County, O.,

By M. E. Theuerkauff, Deputy.

(Seal)

Certified Copy of Record

On the 30th day of June, 1930, said notice to garnishee was filed with the sheriff's return thereon written as follows, to-wit:

SHERIFF'S RETURN

The State of Ohio, Lucas County, ss.

Received this writ June 20th, 1930, at 4:30 o'clock P.M., and pursuant to its command I notified on the 21st day of June, 1930, at 10:00 o'clock A.M., the within named defendant The Spitzer Rorick Trust and Savings Bank, by delivering to Carl A. Mathias, secretary of the said The Spitzer Rorick Trust and Savings Bank, a true and certified copy of this writ with all endorsements thereon. The president or other chief officer of said company could not be found by me in Lucas County, Ohio. On the 21st day of June, 1930, I also notified the within named defendant Horton C. Rorick, Trustee, by delivering to him a true and certified copy of this writ with all endorsements thereon. On the 23d day of June, 1930, I also notified The Spitzer Rorick Trust and Savings Bank, Trustee, by delivering to Carl A. Mathias, secretary of the said The Spitzer Rorick Trust and Savings Bank, Trustee, a true and certified copy of this writ with all endorsements thereon. The president or other chief officer of said company could not be found by me in Lucas County, Ohio. On the 23rd day of June, 1930, I also notified the within named defendant The Everglades Land Company, by delivering to A. V. Foster, vice-president, he being in charge at time of service, of the said The Everglades Land Company, a true and certified copy of this writ with all endorsements thereon. The president or other chief officer of said company could not be found by me in Lucas County, Ohio. On the 21st day of June, 1930, I also notified the within named defendant The Blue Heron Land Company, by delivering to Horton C. Rorick, president of the said The Blue Heron Land Company, a true and certified copy of this writ with all endorsements thereon.

Joseph Zimmerman, Sheriff,
By G. Levy, Deputy.

Certified Copy of Record

On the 27th day of June, 1930, there was filed in said court an affidavit in attachment and garnishment in the above entitled cause, which affidavit is in the words and figures as follows, to-wit:

COURT OF COMMON PLEAS**AFFIDAVIT IN ATTACHMENT AND
GARNISHMENT**

State of Ohio, County of Lucas, ss.

Horton C. Rorick, being first duly sworn, says that he is the plaintiff in the above captioned suit; that he has commenced a civil action in the Court of Common Pleas of Lucas County, Ohio, against Devon Syndicate, Ltd., a corporation, and Paris E. Singer, on a debt arising upon contract, the same being an action to recover from defendants certain moneys due and owing to plaintiff on, under and by virtue of certain contracts between plaintiff and defendants, and the breach and refusal to perform thereof by defendants; that said claim is just and that plaintiff should recover thereon the sum of Four Hundred Thousand Dollars (\$400,000.00) with interest at the rate of six per cent (6%) per annum from June 12, 1930.

Affiant further says that he has good reason to believe that A. V. Foster, H. C. Rorick and Paris E. Singer as Trustees under a certain Voting Trust Agreement bearing date on or about February 1st, 1928, between them and Devon Syndicate, Ltd., have moneys, property and assets of defendants, Devon Syndicate, Ltd., and Paris E. Singer, in their possession and control, due and payable, or to become due and payable to said defendants and that the said A. V. Foster, H. C. Rorick and Paris E. Singer as Trustees should receive notice of garnishment herein.

Affiant further says that the defendant, Devon Syndicate, Ltd., a corporation, is a foreign corporation organized under the laws of the Province of Quebec in the Dominion of Canada; that it is not for any reason, statutory or otherwise, exempted from attachment; that it has not filed with the Secretary of State of the State of Ohio a statement required by General Code, Section 183, not procured from said Secretary of State the certificate provided for by General Code, Section 178; that it is not within the exceptions contained in Division 1 of the General Code, Section 11819, nor was it at the time of the occurrences referred to in the petition in this case, nor

Certified Copy of Record

is it now qualified by law to do business in the State of Ohio; that the defendant, Paris E. Singer, is not a resident of this state and cannot be served with summons in this state; and that the facts set forth in this affidavit are true.

Horton C. Rorick.

Sworn to before me and subscribed in my presence this 25th day of June, 1930.

(Seal) D. W. Drennan,
Notary Public, Lucas County, Ohio.
My commission expires Aug. 9, 1930.

Endorsed on said affidavit in attachment and garnishment, and filed therewith was a praecipe for notice to garnishee in said cause, which praecipe is in the words and figures as follows, to-wit:

PRAECIPE

To the Clerk:

Please issue notice to garnishee to A. V. Foster, H. C. Rorick and Paris E. Singer, as trustees under a certain voting trust agreement bearing date on or about February 1st, 1928.

Fraser, Hiatt, Wall & Effler,
Attorneys for Plaintiff.

Thereupon a notice to garnishee in said cause was issued by the clerk of said court, which notice to garnishee is in the words and figures as follows, to-wit:

NOTICE TO GARNISHEE

State of Ohio, Lucas County, ss.

To the Sheriff of said County, Greeting:

We command you to notify A. V. Foster, H. C. Rorick and Paris E. Singer, as trustees under a certain voting trust agreement bearing date on or about February 1st, 1928; to appear before the Honorable Court of Common Pleas of said county at the Court House in Toledo, on or before the 26th day of July, A. D. 1930, and answer, under oath, all questions put to them touching the property of every description, and credits, of the defendants Devon Syndicate, Ltd., and Paris E. Singer in their possession, or under their control, and they shall disclose truly the amount owing by them to said defendants, whether due or not.

Certified Copy of Record

The sheriff will make due return of this writ on the 7th day of July, A. D. 1930.

Witness my hand and the seal of said court, this 27th day of June, A. D. 1930.

(Seal) George E. Hardy,
Clerk of the Court of Common Pleas of
Lucas County, Ohio,

By M. E. Theuerkauff, Deputy.

On the 3rd day of July, 1930, said Notice to Garnishee was filed with the Sheriff's Return thereon written as follows, to-wit:

SHERIFF'S RETURN

State of Ohio, Lucas County, ss.

Received this writ June 27th, 1930, 9:05 o'clock A. M., and pursuant to its command I notified on the 1st day of July, 1930, at 10:00 o'clock A. M., the within named defendants A. V. Foster and H. C. Rorick, as Trustees under a Certain Voting Trust Agreement bearing date on or about February 1st, 1928, by delivering to each of them a true and certified copy of this writ with all endorsements thereon. The within named defendant Paris E. Singer, as Trustee under a Certain Voting Trust Agreement bearing date on or about February 1st, 1928, could not be found by me in Lucas County, Ohio.

Joseph Zimmerman, Sheriff,
By G. Levy, Deputy.

Certified Copy of Record

On the 10th day of October, 1930, there was filed in said Court an Affidavit for Constructive Service in the above entitled cause, which affidavit is in the words and figures as follows, to-wit:-

IN THE COURT OF COMMON PLEAS**AFFIDAVIT FOR CONSTRUCTIVE SERVICE**

State of Ohio, County of Lucas, ss.

Horton C. Rorick, being first duly sworn, says that he is the plaintiff in the above entitled action, that defendant Devon Syndicate, Ltd., is a foreign corporation organized and existing under and by virtue of the laws of the Province of Quebec in the Dominion of Canada, having its principal office in the Transportation Building in the City of Montreal, Province of Quebec, Dominion of Canada, and is not a resident or citizen of the State of Ohio, nor does it maintain an office or place of business in the State of Ohio; that defendant Paris E. Singer resides at 1 bis Place des Vosges, Paris, France, and is not a resident of the State of Ohio; that service of summons cannot be made upon said defendants, or either of them, in the State of Ohio; that this action is one in which it is sought by provisional remedies of attachment and/or garnishment to take and to appropriate property of said defendants, Devon Syndicate, Ltd., and Paris E. Singer, in the possession of others and within the jurisdiction of this court, and subject same to the satisfaction of plaintiff's claim, and comes within the provisions of General Code Section 11292 of the laws of Ohio, wherein service by publication may be made on said defendants.

Horton C. Rorick.

Sworn to before me and subscribed in my presence this 10th day of October, 1930.

D. W. Drennan,

(Seal)

Notary Public, Lucas County, Ohio,

My commission expires Aug. 9, 1933.

On the 11th day of October, 1930, as appears by the appearance Docket of said Court, a Notice was filed and mailed Paris E. Singer, 1 bis Place des Vosges, France.

On the 11th day of October, 1930, as appears by the Appearance Docket of said Court, a Notice was filed and mailed Devon Syndicate, Ltd., Transportation Building, Montreal, Quebec, Canada.

Certified Copy of Record

On the 15th day of November, 1930, there was filed in said Court a Notice and Affidavit of Publication in the above entitled cause, which Notice and Affidavit is in the words and figures, as follows, to-wit:-

IN THE COURT OF COMMON PLEAS**LEGAL NOTICE**

Fraser, Hiatt, Wall & Effler, Attys.
710 Home Bank Bldg.

Devon Syndicate, Ltd., a foreign corporation organized and existing under the laws of the Province of Quebec, Dominion of Canada, and having its principal office and place of business in the Transportation Building in the City of Montreal, Province of Quebec, Dominion of Canada, and Paris E. Singer, 1 bis Place des Vosges, Paris, France, will take notice that on the 19th day of June, 1930, the plaintiff, Horton C. Rorick, filed his petition against them in the Court of Common Pleas of Lucas County, Ohio, the same being Cause No. 121340, for the procurement by plaintiff against said defendants of a judgment for money for services rendered, based upon contract, all of which is more fully set forth in plaintiff's petition.

The prayer of said petition is for judgment in favor of plaintiff and against said defendants, Devon Syndicate, Ltd., and Paris E. Singer, in the sum of Four Hundred Thousand Dollars (\$400,000.00), with interest thereon at the rate of six per cent (6%) per annum from the 12th day of June, 1930, and for costs of suit.

Said defendants, and each of them, are required to answer said petition on the 6th day of December, 1930, or judgment will be taken against them.

Horton C. Rorick, Plaintiff,
By Fraser, Hiatt, Wall & Effler,
His Attorneys.

Toledo, Ohio, October 10, 1930.

Certified Copy of Record

PROOF OF PUBLICATION

The State of Ohio, County of Lucas, ss.

/ H. J. Chittenden, being first duly sworn, says that he is the General Manager of The H. J. Chittenden Company, the publisher and printer of Toledo Legal News, a daily newspaper, printed and of general circulation in said Lucas County, Ohio; that no weekly edition of said newspaper is published; that the annexed notice was published in said Toledo Legal News, once each week for 6 consecutive weeks, beginning on the 11 day of October, 1930, and that each insertion of said notice in said newspaper was on the same day of each week.

H. J. Chittenden.

Subscribed in my presence and sworn to before me this 15 day of November, 1930.

(Seal)

Winifred Murray

Notary Public in and for Lucas County, Ohio.

On the 5th day of December, 1930, there was filed in said Court a Notice of Removal in the above entitled cause, which Notice is in the words and figures as follows, to-wit:-

IN THE COURT OF COMMON PLEAS

NOTICE OF REMOVAL

The plaintiff will take notice that the defendants have prepared a petition and bond for the removal of this cause to the District Court of the United States for the Northern District of Ohio, Western Division, which Petition and bond said defendants will file herein and present to said Court of Common Pleas of Lucas County, Ohio, in which said action is pending, on the 5th day of December, 1930, at 9 A. M. True copies of said petition and bond are hereto attached.

Hornblower, Miller & Garrison,
Tracy, Chapman & Welles,
Attorneys for Defendants.

A copy of this notice, with copies of petition and bond for removal, has been received this 4th day of Dec. 1930 by the undersigned, counsel for the plaintiff herein.

Fraser, Hiatt, Wall & Effler,
Attorneys for Plaintiff.

Certified Copy of Record

On the 5th day of December, A.D. 1930, Defendants by their attorneys, filed in said Court a Petition for Removal of said cause to the United States District Court for the Northern District of Ohio, Western Division, which petition for Removal is in the words and figures as follows, to-wit:-

IN THE COURT OF COMMON PLEAS

PETITION FOR REMOVAL

Petitioners herein, being the defendants in the above entitled action, appearing specially for the purpose of this petition only and, not intending thereby to waive any question of the sufficiency of service of process or the want of service of process on them or either of them, but expressly reserving all questions of service of process, jurisdiction and want of service of process on them or either of them, and not entering or intending to enter their appearance herein, either jointly or separately or for either of them, respectfully show to this Honorable Court that the controversy herein is one wholly between a citizen and resident of the State of Ohio and citizens and subjects of foreign States; that the matter in controversy herein exceeds, exclusive of interest and costs, the sum of value of Five Thousand Dollars (\$5000); that the suit is one of a civil nature at common law; and does not arise under an act of the United States of America entitled, "An act relating to the liability of common carriers by railroad to their employes in certain cases," approved April 22, 1908, or any amendment thereto, now Sections 51 to 59 of title 45 of the Code of Laws of the United States of America.

Said petitioners say that said suit was filed in this said court June 19, 1930, and that service of summons on the defendants herein was returned "not found". That plaintiff then sought by attachment and garnishment to seize property of defendants and thereupon, to-wit, on the 10th day of October, 1930, filed an affidavit in the attempt to make service by publication on said defendants and caused publications thereof to be issued. That the time within which defendants are required to appear and plead, answer or demur as stated in said notice and as provided by the laws of the State of Ohio, or any rule of this court, is the 6th day of December, 1930, and that said time has not yet expired.

Said petitioners further represent to the Court that at the time said suit was commenced, and at all times

Certified Copy of Record

thereafter, defendant, petitioner herein, Devon Syndicate, Limited (whose name is erroneously stated in plaintiff's petition herein to be Devon Syndicate, Ltd.) was and now is a corporation organized and existing under the laws of the Dominion of Canada, having its principal office in the Transportation Building in the City of Montreal, Province of Québec, Dominion of Canada, and that said defendant, petitioner herein, was and is a citizen of the Dominion of Canada and a subject of Great Britain and was and is an alien and not a citizen of the United States of America nor a citizen or resident of the State of Ohio nor of any other state of the United States of America; that defendant, petitioner herein, Paris E. Singer, is an individual and at the time said suit was commenced and at all times thereafter resided and now does reside at No. 1 Bis Place Des Vosges, Paris, France, and was and now is a citizen and subject of Great Britain and was and is an alien and not a citizen of the United States of America and was not and is not a citizen or resident of the State of Ohio, nor of any other state of the United States of America.

Petitioners further state that plaintiff, Horton C. Rorick, at the time said suit was filed and at all times thereafter was and now is an individual residing in the City of Toledo, Lucas County, Ohio, and is a citizen and resident of the State of Ohio.

Petitioners further state that the said cause is brought by plaintiff herein, Horton C. Rorick, to recover from said defendants the sum of Four Hundred Thousand Dollars (\$400,000.00) that plaintiff alleges to be due from said defendants by reason of services claimed by plaintiff to have been performed by plaintiff for and on behalf of defendants in the State of Florida, under alleged contracts by which plaintiff claims he was to be paid for said services whatever sum plaintiff should determine was the value thereof; that both of petitioners are actually interested in said controversy and your petitioners desire to remove said suit to the District Court of the United States for the Northern District of Ohio, Western Division.

Petitioners herewith file a good and sufficient bond under the statutes in such cases made and provided conditioned as the law directs that they will within thirty (30) days from the filing of the petition for removal file a certified copy of the record of this cause to the District Court of the United States for the Northern District of Ohio, Western Division, and for the payment of all costs

Certified Copy of Record

which may be awarded by said court if said the District Court shall determine this suit is improperly and wrongfully removed thereto.

Wherefore your petitioners pray that this cause proceed no further herein except to order a removal of this cause to the said District Court of the United States for the Northern District of Ohio, Western Division, as required by law and to accept the bond herewith presented and direct the clerk of this court to provide a certified transcript of the record of this cause as required by law.

Hornblower, Miller & Garrison,
Tracy, Chapman & Welles,
Attorneys for Defendants.

State of Ohio, Lucas County, ss.

Geo. D. Welles, being first duly sworn, on his oath, says that he is a member of the firm of Tracy, Chapman & Welles, and is one of the attorneys for the defendants in the above entitled action; that the correct name of the defendant, Devon Syndicate, Ltd., is Devon Syndicate, Limited, and that said defendant is a corporation organized and existing under and by virtue of the laws of the Dominion of Canada, and that no officer of said defendant is now within the State of Ohio; and that defendant, Paris E. Singer, is an individual, residing in Paris, France, and is a citizen of Great Britain; that neither of said defendants is a resident of Lucas County, Ohio, or of the State of Ohio; that defendant, Paris E. Singer, is not now within the State of Ohio; that he has read the foregoing petition for removal and that the facts stated therein are true.

Geo. D. Welles.

Sworn to before me and subscribed in my presence this 4th day of December, 1930.

J. H. Beatty,

(Seal)

Notary Public, Lucas County, Ohio.

My commission expires Aug. 16, 1931.

Certified Copy of Record

On the 5th day of December, 1930, there was filed in said court a Bond for Removal of said cause to the United States District Court for the Northern District of Ohio, Western Division, which Bond for Removal is in the words and figures as follows, to-wit:

IN THE COURT OF COMMON PLEAS**BOND ON REMOVAL**

Know all men by these presents that Devon Syndicate, Limited (whose name is erroneously stated in plaintiff's petition in the above entitled action to be Devon Syndicate, Ltd.), a corporation organized and existing under the laws of the Dominion of Canada, and Paris E. Singer, an individual residing at No. 1 Bis Place Des Vosges, Paris, France, as principals, and National Surety Company, as surety, are held and firmly bound unto Horton C. Rorick, plaintiff in the above entitled action, his successors and assigns in the sum of Five Hundred Dollars (\$500.00) lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

The condition of this obligation is such that whereas said Devon Syndicate, Limited, and Paris E. Singer have made and filed their petition, duly verified, in the above entitled suit in the Court of Common Pleas of Lucas County, Ohio, and have so filed the same prior to the time said defendants or either of them, as required by the laws of the State of Ohio or any rule of said State court, in which said suit has been brought, to answer or plead to the declaration or complaint of the plaintiff, for the removal of the above entitled suit into the District Court of the United States for the Northern District of Ohio, Western Division, being the District where such suit is pending, for further proceedings on grounds in said petition set forth, and have in said petition prayed that all future proceedings in said action in said Court of Common Pleas of Lucas County, Ohio, be stayed, except the granting of an order for the removal of said cause to said District Court of the United States, accepting this bond and directing the Clerk to provide a certified transcript of the record therein, as required by law.

Now, therefore, if petitioners, the said Devon Syndicate, Limited, and Paris E. Singer, shall enter or cause to be entered in said District Court of the United States

Certified Copy of Record

for the Northern District of Ohio, Western Division, within thirty (30) days from the date of filing said petition for removal, a certified copy of the record in said suit and shall pay or cause to be paid all costs that may be awarded by the said District Court of the United States, if said District Court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise to remain in full force and effect.

Witness our hands and seals this 4th day of December, 1930.

(L.S.) Devon Syndicate, Limited, Principal,
By Geo. D. Welles,
Attorney in fact and of record.

(L.S.) Paris E. Singer, Principal,
By Geo. D. Welles,
Attorney in fact and of record.

(Seal) National Surety Company, Surety,
By H. M. Hayden, Attorney-in-Fact.

Dec. 5, 1930. Approved as to form and sufficiency.
Gosline, J.

IN THE COMMON PLEAS COURT

AFFIDAVIT

State of Ohio, County of Lucas, ss.

Geo. D. Welles, being first duly sworn, says that he has been duly and expressly authorized in writing by Devon Syndicate, Limited, and Paris E. Singer, the defendants in whose name, as principals, he has executed the foregoing bond on removal, to execute said bond in their names and on their behalf respectively.

Geo. D. Welles.

Sworn to before me and subscribed in my presence this 4th day of December, 1930.

(Seal) J. H. Beatty,
Notary Public, Lucas County, Ohio.
My commission expires August 16, 1931.

Certified Copy of Record

On the 5th day of December, 1930, there was filed in said Court a Motion for Removal in the above entitled cause, which motion is in the words and figures as follows, to-wit:-

IN THE COMMON PLEAS COURT**MOTION FOR REMOVAL**

Now come the defendants and appearing solely for the purpose of removing this said cause, and for no other purpose, and not intending thereby to waive any question of the sufficiency of service or the want of service on them or either of them, but expressly reserving all questions of service, jurisdiction and want of service on them or either of them, and not entering or intending to enter their appearance herein either jointly or separately, or for either of them, move the court for an order removing this said cause to the District Court of the United States for the Northern District of Ohio, Western Division, in accordance with the petition for removal filed herein.

Hornblower, Miller & Garrison,
Tracy, Chapman & Welles,
Attorneys for Defendants.

On the 5th day of December, 1930, being the 63rd day of the September Term, A. D. 1930, an Order in said cause was made, an entry of which appears on the Journal of said Court, in the words and figures as follows, to-wit:

This day this cause came on to be heard on the petition and motion of the defendants herein, both appearing specially for said purpose only, and for no other purpose, for the removal of this said cause from this court to the District Court of the United States for the Northern District of Ohio, Western Division, and the court, upon consideration of the same, and being fully advised in the premises, finds that said defendants have filed said petition for removal within the time provided by law and have at the same time offered their bond in the sum of Five Hundred Dollars (\$500.00) with good and sufficient surety, conditioned according to law, and the court further finds that notice required by law of the filing of said bond and petition prior to the filing thereof had been served upon the plaintiff herein, which notice the court

Certified Copy of Record

finds was sufficient and in accordance with the requirements of the law.

It is therefore ordered that this court does now hereby approve and accept said bond and said petition and does hereby order this cause to be removed to the District Court of the United States for the Northern District of Ohio, Western Division, pursuant to the statutes of the United States, that the Clerk of this court shall prepare and deliver to plaintiff a certified copy of the record of said suit, and that all other proceedings in this court be stayed, to which order the plaintiff herein excepts.

Gosline, J.

COSTS

Clerk	\$16.15
Sheriff	6.51
Printer	18.21
Notaries	4.80
Legal News	1.35

Total.....\$47.02

CERTIFICATE TO COMMON PLEAS RECORD

The State of Ohio, Lucas County, ss.

I, George E. Hardy, Clerk of the Court of Common Pleas within and for said County, and in whose custody the files, pleadings, journals, execution dockets, and seal of said court, are required by the laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the Records of the proceedings of the Court of Common Pleas within and for said county, and that said foregoing copy has been compared by me with the original record, and that the same is a correct transcript therefrom.

In testimony whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in Toledo, in said County, this 12th day of December, A. D. 1930.

(Seal)

George E. Hardy, Clerk.

ANSWER OF THE SPITZER-RORICK TRUST & SAVINGS BANK, GARNISHEE

(Filed Jan. 15, 1931)

Now comes The Spitzer-Rorick Trust & Savings Bank, a corporation duly organized and existing under the laws of Ohio, and for its answer as garnishee in the above entitled cause says:

(1) That said Spitzer-Rorick Trust & Savings Bank is indebted to the defendant, Devon Syndicate, Ltd., on two special deposit accounts for \$9,255.96 and \$20,258.42 respectively;

(2) That under date of February 1st, 1928, Defendant Devon Syndicate, Ltd., as the owner of all the capital stock of the Everglades Club Company, a corporation of the State of Florida, executed a certain contract entitled "Everglades Club Company Voting Trust Agreement" wherein said Devon Syndicate, Ltd., was called "Stockholders" and Horton C. Rorick, Albert V. Foster and Paris E. Singer were called "Voting Trustees".

In said Voting Trust Agreement Devon Syndicate, Ltd., represented that it was the then owner of all the shares of capital stock in said Everglades Club Company, amounting to One Thousand (1,000) shares of no par value. It was further provided therein that Certificates for said entire capital stock, after being properly endorsed, should be deposited with said Voting Trustees to be held for a period of Ten (10) years unless a certain event happened as therein provided, which event has not happened. Under the terms of said Voting Trust Agreement The Spitzer-Rorick Trust & Savings Bank was designated as the depository and agent of said Voting Trustees and it now holds as such depository and agent Certificates for the entire capital stock of the Everglades Club Company against which it has issued as agent for said Voting Trustees, Voting Trust Certificates, which Certificates are non-negotiable and are only transferable upon the books of the Voting Trustees as provided in said Voting Trust Agreement.

Under the terms of said Voting Trust Agreement there was duly issued to said Devon Syndicate, Ltd., in March 1928, a Voting Trust Certificate, which recited that said Devon Syndicate, Ltd., would be entitled to receive a Certificate, or Certificates, expressed to be fully paid for Five Hundred (500) shares of the no par value capital stock of said Everglades Club Company upon the termination of the said Voting Trust Agreement. Said

Motion

Agreement is still in full force and effect and said Devon Syndicate, Ltd., still owns said Voting Trust Certificate as shown by the records of said Voting Trustees in the possession of said Siptzer-Rorick Trust & Savings Bank.

The Spitzer-Rorick Trust and Savings Bank,
By J. R. Easton, Vice-President.

State of Ohio, County of Lucas, ss.

J. R. Easton, being first duly sworn, says that he is the Vice-President of The Spitzer-Rorick Trust & Savings Bank and has read its foregoing answer as garnishee in the above entitled cause, and is duly authorized herein, and that the allegations therein contained are true as he believes.

J. R. Easton.

Sworn to before me and subscribed in my presence this 15th day of January, 1931.

(Seal) D. W. Drennan,
Notary Public, Lucas County, Ohio.
My commission expires Aug. 9, 1933.

MOTION

(Filed Jan. 26, 1931)

Now comes the defendant, Devon Syndicate, Limited, appearing specially for the purpose of this motion only and not intending thereby to submit itself to the jurisdiction of this court, and not waiving or relinquishing hereby any objections that said defendant may have to the jurisdiction of this court over the person of this defendant, and not entering or intending to enter an appearance herein, and moves the court for an order quashing the pretended service of summons and setting aside the return thereof as to said defendant and dismissing the pretended attachment and garnishment of said defendant's property by virtue whereof an attempt

Motion

to serve summons in said action on said defendant by publication was made, for the following reasons, to wit:

1. The affidavit by which said pretended attachment and garnishment was attempted to be obtained is defective and insufficient to support an attachment and garnishment and void for the reason that the notary before whom said affidavit was sworn is an attorney employed by the plaintiff and a firm of which plaintiff is a member and said notary is interested in the result of said action.

2. The affidavit by which said pretended attachment and garnishment was attempted to be obtained is defective and insufficient to support an attachment and/or garnishment and void for the reason that the affidavit does not comply with the terms of Ohio General Code Sections 11828 and 11820.

3. There is not and was not at the time the pretended levy of attachment and garnishment was made in the cause any property of this defendant within the jurisdiction of this court or of the Court of Common Pleas of Lucas County, Ohio, out of which said attachment process issued, on which any valid attachment could be or was levied.

4. There is not and was not at the time the pretended levy of attachment and garnishment was made in this cause any property of this defendant in the possession of any of the garnishees herein within the jurisdiction of this court or of the Court of Common Pleas of Lucas County, Ohio, out of which said attachment and garnishment process issued which has been seized or levied upon by said process.

5. There is not and was not at the time the pretended levy of attachment and garnishment was made in this cause, any property jointly owned by defendants herein or any property in which both of said defendants had any right, title or interest, within the jurisdiction of this court or of the Court of Common Pleas of Lucas County, Ohio, out of which said attachment process issued, or in the possession of any of the garnishees herein, within the jurisdiction of this court or of said Court of Common Pleas of Lucas County, Ohio, or subject to seizure or which has been seized or levied upon by said process.

6. The attempted attachment and garnishment of property of this defendant and the attempted service of process upon it by publication and mailing of notice are and were all void and of no effect for the reason, among others, that this defendant is a corporation, incorporated

Order

under the first part of Chapter 79 of the Revised Statutes of Canada, 1906, known as the "Companies' Act," and amending acts, and that the correct name of this defendant is Devon Syndicate, Limited, whereas in plaintiff's petition and in the affidavits in attachment and garnishment herein, and in the affidavit for constructive service, and in the notice to this defendant, service of which was attempted by publication and mailing, this defendant was described as an alleged to be a corporation organized and existing under the laws of the Province of Quebec, in the Dominion of Canada; named Devon Syndicate, Ltd., and no service of process has been served upon, and no publication of notice of attachment and garnishment has been made directed to, this defendant, and there is no corporation of the name of Devon Syndicate, Ltd., or Devon Syndicate, Limited, organized or incorporated under the laws of the Province of Quebec, in the Dominion of Canada.

7. There has been no lawful service of summons made upon this defendant by publication or otherwise.

Hornblower, Miller, Miller & Boston,

Tracy, Chapman & Welles,

Attorneys for Devon Syndicate, Limited.

Copy of foregoing motion delivered to Fraser, Hiatt, Wall & Effler this 26th day of January, 1931.

Tracy, Chapman & Welles.

ORDER

(Filed Feb. 17, 1936)

Leave is hereby granted the plaintiff to file instant his supplemental and amended petition and supplemental affidavit in garnishment, on which an order of attachment may issue in accordance with law.

Geo. P. Hahn,

U. S. District Judge.

SUPPLEMENTAL AND AMENDED PETITION

(Filed Feb. 17, 1936)

Now comes the plaintiff, and with leave of court first obtained files this, his supplemental and amended petition.

For his cause of action herein, plaintiff says that the defendant, Devon Syndicate, Limited (also sometimes known as Devon Syndicate, Ltd.), is a corporation organized and existing under the laws of the Dominion of Canada, the last known address of its principal office and place of business being Transportation Building, in the City of Montreal, Province of Quebec, Dominion of Canada; that the defendant, Paris E. Singer, is a non-resident of the State of Ohio; that prior to January 1, 1926, he caused to be incorporated said defendant, Devon Syndicate, Limited, and transferred to said corporation a large portion of his assets; that he owns or controls all of the capital stock of the corporation, Devon Syndicate, Limited, and is president and managing officer thereof.

Plaintiff says that the said Paris E. Singer either through his ownership or control of all of the stock of Devon Syndicate, Limited, is and has been, and was at the times hereinafter referred to, in actual control of various corporations, among them the Palm Beach Ocean Realty Company; the Ocean and Lake Realty Company; Everglades Club Hotel and Apartment Company; and The Highland Glades Farms Company; and the said Paris E. Singer is, and was at the times hereinafter complained of, very heavily interested in all of said corporations.

On or about April 8, 1926, the defendant, Paris E. Singer, made a written contract with the plaintiff, wherein and whereby this plaintiff continued to be employed by said Singer for the calendar years 1926 and 1927, as financial adviser for the said Singer, and for all of the corporations controlled by the said Singer, including Devon Syndicate, Limited, Palm Beach Realty Company, The Ocean and Lake Realty Company, Everglades Club Hotel and Apartment Company and The Highland Glades Farms Company, and under and by virtue of the terms of said agreement, which was accepted by the plaintiff, it was provided that the services to be rendered by the plaintiff would largely be of an advisory nature, and they were not in any way to conflict with plaintiff's duty as a partner in Spitzer Rorick and Company; and it was also agreed that the amount of compensation to be paid

Supplemental and Amended Petition

plaintiff should be fixed exclusively by the plaintiff, and the defendant, Singer, agreed to pay whatever amount was fixed by plaintiff with the limitation that the charge should not exceed Fifty Thousand Dollars per year and expenses for the calendar years 1926 and 1927.

Plaintiff says he accepted said contract and entered upon the performance of said duties, and it was then discovered by both parties that the services rendered and to be rendered were of vastly greater extent and value than was contemplated by either party at the time of the making of the contract of April 8, 1926; that plaintiff and defendant Singer thereupon and shortly thereafter agreed that plaintiff should assume and perform the additional duties requested by the defendant Singer, and the contract made on April 8, 1926, was modified as to the extent that the limitation of Fifty Thousand Dollars per year was expressly removed, and it was agreed that no limitation would be placed upon the value of the services to be rendered, and that plaintiff should and would have the right to fix the value of the services, and the amount of compensation to be paid, and defendant Singer agreed that said compensation as fixed by plaintiff would be paid to plaintiff.

Plaintiff says that the defendant, Devon Syndicate, Limited, in the month of August, 1926, agreed with the plaintiff that it would join with the defendant Singer in the employment and compensation to be paid to plaintiff for the services rendered, and to be rendered as aforesaid, and on or about March 12, 1927, the defendant, Devon Syndicate, Limited, ratified and approved said contract in writing, and upon said day, in writing, in consideration of services already rendered and to be rendered by the plaintiff to said defendants and to affiliated corporations hereinbefore named, and other corporations owned and controlled by Devon Syndicate, Limited, agreed that it would pay to the plaintiff for services whatever amount the plaintiff should fix as the value thereof, and in such amounts and on such dates as in the sole discretion of the plaintiff would be fixed. It was the intent of the plaintiff and the defendants that the services rendered and to be rendered by the plaintiff referred to in both of said written contracts would be the same services and would be rendered to the said defendants, and all of the interests or corporations owned or controlled by the defendants.

Plaintiff says that following the expiration of the year 1927, he continued performing the same services for

Supplemental and Amended Petition

the defendants as aforesaid, by and with their full consent and approval down to the 12th day of June, 1930, at which time he resigned; that during all of said time, down to the 12th day of June, 1930, plaintiff fully performed his contracts, and rendered services as financial adviser and otherwise in connection with the properties aforesaid to the full satisfaction and approval of the defendants; that during the period of employment and down to the time of his resignation, plaintiff devoted a very large amount of time to the work involved, and handled assets of the defendants estimated by them to be of more than Twenty Million Dollars in value, and by reason of his efforts, the properties of the defendants and the other corporations which were intricately involved, were largely saved for the defendants, and the other interested corporations, and his services, during all of said time, were accepted by the defendants and by them in every way ratified, confirmed and approved.

Plaintiff says that acting under the provisions of his contracts aforesaid, he has fixed the value of his services rendered under his employment in the amount of Four Hundred Thousand (\$400,000.00) Dollars in addition to expenses and credits received by plaintiff in connection with the performance of his duties under said contracts, and there is due him by virtue of said contracts of employment, the sum of Four Hundred Thousand (\$400,000.00) Dollars, together with interest at six per cent (6%) per annum from the 12th day of June, 1930. Said services did not include any services rendered as a partner of Spitzer Rorick and Company or as an officer of The Spitzer Rorick Trust & Saving Bank.

Wherefore, plaintiff prays judgment against said defendants, and each of them, for the sum of Four Hundred Thousand (\$400,000.00) Dollars with interest thereon at the rate of six per cent (6%) per annum from the 12th day of June, 1930.

Fraser, Effler, Shumaker & Winn,
Attorneys for Plaintiff.

State of Ohio, County of Lucas, ss.

Horton C. Rorick, being first duly sworn, says that he is the plaintiff in the above entitled action; that he has read the foregoing supplemental and amended petition; and the allegations contained therein are true as he believes.

Horton C. Rorick.

Supplemental and Amended Petition

Sworn to before me and subscribed in my presence
this 23rd day of January, 1926.

(Seal) Caroline McLaughlin,
Notary Public, Lucas County, Ohio.

PRAECIPE

To the Clerk:

Please issue summons in the above entitled action for the defendants, addressed to the United States marshal, for the Northern District of Ohio, returnable according to law, endorsed: "Amount claimed, \$400,000.00 with interest at 6% per annum from June 12, 1930."

Also issue order of garnishment and attachment addressed to the United States marshal, for the Northern District of Ohio, to be served upon The Spitzer Rorick Trust and Savings Bank, 315 Superior Street, Toledo, Ohio; Horton C. Rorick and The Spitzer Rorick Trust and Savings Bank, Trustees, 315 Superior Street, Toledo, Ohio; The Everglades Club Company, 315 Superior Street, Toledo, Ohio; and The Blue Heron Land Company, 315 Superior Street, Toledo, Ohio, commanding each of said persons and corporations to answer concerning monies, properties and other assets in their hands or under their control belonging to the defendants, Devon Syndicate, Limited, and/or Paris E. Singer.

Fraser, Effler, Shumaker & Winn,
Attorneys for Plaintiff.

SUPPLEMENTAL AFFIDAVIT IN GARNISHMENT

(Filed Feb. 17, 1936)

State of Ohio, County of Lucas, ss.

Horton C. Rorick, being first duly sworn, says that he is the plaintiff in the above captioned suit; that he heretofore commenced a civil action in the Court of Common Pleas of Lucas County, Ohio, against Devon Syndicate, Limited, a corporation, also sometimes known as Devon Syndicate, Ltd., and Paris E. Singer on a debt arising upon contract, being an action to recover from defendants certain moneys due and owing to plaintiff herein under and by virtue of certain contracts between plaintiff and defendants, and the breach and refusal to perform thereof by defendants; that the said action was removed from said Court of Common Pleas of Lucas County and is now pending in the said United States District Court, for the Northern District of Ohio, Western Division; that said claim is just and that plaintiff should recover thereon from defendants the sum of Four Hundred Thousand Dollars (\$400,000.00) with interest at the rate of six per cent (6%) per annum from June 12, 1930.

Affiant further says that he has good reason to believe and does believe that The Spitzer-Rorick Trust & Savings Bank, a banking corporation of Ohio, with its principal office in the City of Toledo, Ohio, Horton C. Rorick, Albert V. Foster and Paris E. Singer, as Trustees, the Everglades Club Company and the Blue Heron Land Company have moneys, property and assets of defendant, Devon Syndicate, Limited, and/or defendant Paris E. Singer, in their possession and control due and payable or to become due and payable to either one or both of said defendants. Without limiting the generality of the foregoing, affiant says that he has good reason to believe and does believe that The Spitzer-Rorick Trust & Savings Bank is indebted to Devon Syndicate, Limited, on two special deposit accounts for Nine Thousand Two Hundred Fifty-five Dollars and Ninety-six Cents (\$9,255.96) and Twenty Thousand Two Hundred Fifty-eight Dollars and Twenty-four Cents (\$20,258.24), respectively; that the Spitzer-Rorick Trust & Savings Bank has in its possession, as depository for Horton C. Rorick and Albert V. Foster, constituting a majority of three voting trustees under a voting trust agreement dated February 1, 1928, five hundred (500) shares of the capital stock of the Everglades Club Company, for which said

Supplemental Affidavit in Garnishment

voting trustees have issued to Devon Syndicate, Limited, a voting trust certificate representing said five hundred (500) shares; that The Spitzer-Rorick Trust & Savings Bank, trustee under an agreement between Spitzer-Rorick Trust & Savings Bank, trustee under an agreement between Spitzer-Rorick Trust & Savings Bank and Devon Syndicate, Limited, dated March 16, 1927, has collected for the benefit of and is indebted to Devon Syndicate, Limited, in the amount of Seventeen Thousand Five Hundred Seventy-six Dollars and Eight Cents (\$17,576.08) as of January 24, 1936, and for such additional amounts as may have been collected under the terms of said agreement subsequent to said date, and in addition is holding as trustee under said agreement Certificate No. 4 for ten (10) shares of the capital stock of the Lake Country Club Estates, Inc., a Florida corporation, in trust for said defendant, Devon Syndicate, Limited?

Affiant further says that the Everglades Club Company is indebted to the said Devon Syndicate, Limited, in the sum of Forty-four Thousand Eight Hundred Ninety-eight Dollars and Twenty Cents (\$44,898.20) with interest, representing the balance due on a note for Two Hundred Thousand Dollars (\$200,000.00), and that it is further indebted to Devon Syndicate, Limited, in the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) on five promissory notes dated March 22, 1928, and payable respectively on or before March 30, 1929, 1930, 1931, 1932 and 1933; that on July 24, 1926, the Everglades Club Company specifically assumed and agreed to pay One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) with interest thereon from May 1, 1927, on a note and mortgage of the Ocean & Lake Realty Company, a Florida corporation, which had been transferred and assigned to said The Spitzer-Rorick Trust & Savings Bank to secure an authorized bond issue of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00); that said Devon-Syndicate, Limited, is the owner of One Million Five Hundred Thousand Dollars (\$1,500,000.00) of the said bonds under the said bond issue, being bonds numbered 513 to 2012, both inclusive.

Affiant says that The Spitzer-Rorick Trust & Savings Bank, Albert V. Foster and Horton C. Rorick, as trustee, The Blue Heron Land Company and the Everglades Company should receive notice of garnishment herein.

Affiant further says that Devon Syndicate, Limited,

Supplemental Affidavit in Garnishment

existing under the laws of the Dominion of Canada, with its principal office in the City of Montreal, Province of Quebec; that it is not for any reason, statutory or otherwise, exempted from attachment; that it has not filed with the Secretary of State of the State of Ohio a statement required by General Code, section 8625-5, nor procured from said Secretary of State the license provided for by General Code, Section 8625-4; that it is not within the exceptions contained in Division 1 of the General Code, Section 11819, nor was it at the time of the occurrences referred to in the petition in this case, nor is it now qualified by law to do business in the State of Ohio; that the defendant, Paris E. Singer, is not a resident of this state and cannot be served with summons in this state; and that the facts set forth in this affidavit are true.

Horton C. Rorick.

Sworn to before me and subscribed in my presence
this 23rd day of January, 1936.

(Seal)

Caroline McLaughlin,
Notary Public, Lucas County, Ohio.

RETURN OF THE MARSHAL

(Filed Feb. 26, 1936)

Received this order of attachment on the 17th day of February, 1936, and agreeable to the command thereof, I served the Everglades Club Company, 315 Superior Street, Toledo, Ohio, the garnishee named in the order of attachment, by delivering a copy thereof to J. R. Easton, Secy. & Treas. of said garnishee, the President or other chief officer being absent from this District, together with a copy of the notice to garnishee, hereto attached, on the 18th day of February, 1936.

I also served The Blue Heron Land Company, 315 Superior Street, Toledo, Ohio, a garnishee named in the order of attachment, by delivering a copy thereof to Marvin H. Rorick, Secy. & Treas. of said garnishee, the president or other chief officer being absent from this District, together with a copy of the notice to garnishee, hereto attached, on the 18th day of February, 1936.

I also served The Spitzer-Rorick Trust & Savings Bank, 315 Superior Street, Toledo, Ohio, a garnishee named in the order of attachment, by delivering a copy thereof to Marvin H. Rorick, vice president of said garnishee, together with a copy of the written notice to garnishee, hereto attached, on the 18th day of February, 1936.

I also served The Spitzer-Rorick Trust & Savings Bank and Horton C. Rorick, Trustee, 315 Superior Street, Toledo, Ohio, garnishee named in the order of attachment, by delivering a copy thereof to Marvin H. Rorick, vice president of said The Spitzer-Rorick Trust & Savings Bank, together with a copy of the notice to garnishee, hereto attached, on the 18th day of February, 1936.

I also served Horton C. Rorick, 315 Superior Street, Toledo, Ohio, a garnishee named in the order of attachment, by leaving a copy thereof, together with a copy of the notice to garnishee, hereto attached, for him at 315 Superior Street, Toledo, Ohio, with Marvin H. Rorick, his son.

Jesse T. Gill, Deputy Marshal.

Order of Attachment

ORDER OF ATTACHMENT

The United States of America,
Northern District of Ohio, ss:
The President of the United States of America,
To the Marshal of the Northern District of Ohio—Greetings:

You are hereby commanded to attach the goods, chattels, stocks, interest in stocks, rights, credits, money and effects of said defendants, Devon Syndicate, Limited, and Paris E. Singer, in your district, not exempt by law from being applied to the payment of plaintiff's claim, or so much thereof as will satisfy said claim of Four Hundred Thousand Dollars (\$400,000.00) and interest, and the probable costs of this action, not exceeding Fifty Dollars (\$50.00); and make due return of this order with your proceedings had thereon by the 2nd day of March, 1936.

Witness, the Honorable Paul Jones, George P. Hahn, S. H. West, and John M. Killits, District Judges of the United States, this 17th day of February, A. D. 1936.

(Seal)

F. J. Denzler, Clerk,
By George H. Blossom,
Deputy Clerk.

*Notice to Garnishee***NOTICE TO GARNISHEE**

The United States of America,
Northern District of Ohio, ss.

The President of the United States of America,
To the Marshal of the Northern District of Ohio—Greetings:

You are hereby commanded to notify The Blue Heron Land Company, 315 Superior Street, to appear before the Honorable District Court of the United States, for the Northern District of Ohio, Western Division, at the Federal Building in Toledo, on or before the 25th day of April, 1936, and answer, under oath, all questions put to it touching the property of every description and credits of the defendants Devon Syndicate, Limited, and Paris E. Singer, or either of them in its possession or under its control, and it shall disclose truly the amount owing by it to said defendants, or either of them, whether due or not.

The Marshal will make due return of this writ on the 2nd day of March, 1936.

Witness, the Honorable Paul Jones, George P. Hahn, S. H. West and John M. Killits, District Judges of the United States, this 17th day of February, A. D. 1936.

F. J. Denzler, Clerk,

(Seal)

By George H. Blossom,
Deputy Clerk.

Notice to Garnishee

NOTICE TO GARNISHEE

The United States of America,
Northern District of Ohio, ss:
The President of the United States of America,
To the Marshal of the Northern District of Ohio—Greetings:

You are hereby commanded to notify The Spitzer-Rorick Trust & Savings Bank, 315 Superior Street, to appear before the Honorable District Court of the United States, for the Northern District of Ohio, Western Division, at the Federal Building in Toledo, on or before the 25th day of April, 1936, and answer, under oath, all questions put to it touching the property of every description and credits of the defendants Devon Syndicate, Limited, and Paris E. Singer, or either of them in its possession, or under its control, and it shall disclose truly the amount owing by it to said defendants, or either of them, whether due or not.

The Marshal will make due return of this writ on the 2nd day of March, 1936.

Witness, the Honorable Paul Jones, George P. Hahn, S. H. West and John M. Killits, District Judges of the United States, this 17th day of February, A. D. 1936.

F. J. Denzler, Clerk,

(Seal).

By George H. Blossom,
Deputy Clerk.

*Notice to Garnishee***NOTICE TO GARNISHEE**

The United States of America,
Northern District of Ohio, ss.
The President of the United States of America,
To the Marshal of the Northern District of Ohio—Greetings:

You are hereby commanded to notify Horton C. Rorick and The Spitzer-Rorick Trust & Savings Bank, Trustees, 315 Superior Street, to appear before the Honorable District Court of the United States for the Northern District of Ohio, Western Division, at the Federal Building in Toledo, on or before the 25th day of April, 1936, and answer, under oath, all questions put to it touching the property of every description and credits of the defendants Devon Syndicate, Limited, and Paris E. Singer, or either of them in its possession, or under its control, and it shall disclose truly the amount owing by it to said defendants, or either of them, whether due or not.

The Marshal will make due return of this writ on the 2nd day of March, 1936.

Witness, the Honorable Paul Jones, George P. Hahn, S. H. West and John M. Killits, District Judges of the United States, this 17th day of February, A. D. 1936.

F. J. Denzler, Clerk,

(Seal)

By George H. Blossom,
Deputy Clerk.

Notice to Garnishee

NOTICE TO GARNISHEE

The United States of America,
Northern District of Ohio, ss:
The President of the United States of America,
To the Marshal of the Northern District of Ohio—Greetings:

You are hereby commanded to notify the Everglades Club Company, 315 Superior Street, to appear before the Honorable District Court of the United States, for the Northern District of Ohio, Western Division, at the Federal Building in Toledo, on or before the 25th day of April, 1936, and answer, under oath, all questions put to it touching the property of every description and credits of the defendants Devon Syndicate, Limited, and Paris E. Singer, or either of them, in its possession, or under its control, and it shall disclose truly the amount owing by it to said defendants, or either of them, whether due or not.

The Marshal will make due return of this writ on the 2nd day of March, 1936.

Witness, the Honorable Paul Jones, George P. Hahn, S. H. West and John M. Killits, District Judges of the United States, this 17th day of February, A. D. 1936.

F. J. Denzler, Clerk,

(Seal)

By George H. Blossom,
Deputy Clerk.

*Notice to Garnishee***NOTICE TO GARNISHEE**

The United States of America,

Northern District of Ohio, ss:

The President of the United States of America,

To the Marshal of the Northern District of Ohio—Greetings:

You are hereby commanded to notify Horton C. Rorick, 315 Superior Street, to appear before the Honorable District Court of the United States, for the Northern District of Ohio, Western Division, at the Federal Building, in Toledo, on or before the 25th day of April, 1936, and answer, under oath, all questions put to it touching the property of every description and credits of the defendants Devon Syndicate, Limited, and Paris E. Singer, or of either of them, in its possession, or under its control, and it shall disclose truly the amount owing by it to said defendants, or either of them, whether due or not.

The Marshal will make due return of this writ on the 2nd day of March, 1936.

Witness, the Honorable Paul Jones, George P. Hahn, S. H. West and John M. Killits, District Judges of the United States, this 17th day of February, A. D. 1936.

F. J. Denzler, Clerk,

(Seal)

By George H. Blossom,
Deputy Clerk.

*Motion***MOTION**

(Filed April 11, 1936.)

Now comes the defendant, Devon Syndicate, Limited, appearing specially for the purpose of this motion only, and not intending thereby to submit itself to the jurisdiction of this court, and not waiving or relinquishing hereby any objections that said defendant may have to the jurisdiction of this court over the person of this defendant, and not entering or intending to enter an appearance herein, and moves the court for an order quashing the pretended service of summons on the plaintiff's supplemental and amended petition and setting aside the return thereof as to said defendant and dismissing the pretended attachment and garnishment of said defendant's property made on the supplemental affidavit in garnishment by virtue whereof an attempt to serve summons in said action on said defendant by publication was made, for the following reasons, to-wit:

1. There is not and was not at the time the pretended levy of attachment and garnishment was made under said supplemental and amended petition and supplemental affidavit in garnishment; any property of this defendant within the jurisdiction of this honorable court out of which said attachment process issued, on which any valid attachment could be or was levied.

2. There is not and was not at the time the pretended levy of attachment and garnishment was made on the supplemental and amended petition of plaintiff and supplemental affidavit in garnishment, any property of this defendant in the possession of any of the garnishees herein, within the jurisdiction of this honorable court, out of which said attachment and garnishment process issued, which has been seized or levied upon by said process.

3. There is not and was not at the time the pretended levy of attachment and garnishment was made under the supplemental and amended petition of plaintiff and the supplemental affidavit in attachment, any property jointly owned by defendants herein, or any property in which both of said defendants had any right, title or interest, within the jurisdiction of this honorable court, out of which said attachment process issued, or in the possession of any of the garnishees herein, within the jurisdiction of this honorable court or subject to seizure, or which has been seized or levied upon by said process.

4. There has been no lawful service of summons under the supplemental and amended petition made upon this defendant.

Supplemental Answer of Spitzer-Rorick Tr. & Savs. Bank

5. The pretended attachment and garnishment under said supplemental and amended petition and the supplemental affidavit in garnishment is void and of no effect, for the reason, among others, that it is an attempt to originate a proceeding in this honorable court against defendant and obtain an attachment of defendant's property without personal service of summons on this defendant.

6. This honorable court has no jurisdiction either of property or person giving jurisdiction for the maintenance of the said action against this defendant.

Miller, Owen, Otis & Bailly,
Welles, Kelsey & Cobourn,
Attorneys for Devon Syndicate,
Limited,

We acknowledge receipt of a copy of the foregoing motion this 11th day of April, 1936.

Fraser, Effler, Shumaker & Winn,
Attorneys for Plaintiff.

**SUPPLEMENTAL ANSWER OF THE SPITZER-
RORICK TRUST & SAVINGS BANK
AS GARNISHEE**

(Filed April 22, 1936.)

Now comes The Spitzer-Rorick Trust & Savings Bank, a banking corporation duly organized and existing under the laws of Ohio, and for its supplemental answer as garnishee to its answer filed in the above entitled cause on or about January 15, 1931, says:

1. That it still holds the two special deposits for \$9,255.96 and \$20,258.42 respectively, made by defendant Devon Syndicate, Ltd., and described in the answer of this garnishee filed herein on or about January 15, 1931, and which it is still holding under the order of attachment heretofore issued herein to this garnishee.

Supplemental Answer of Spitzer-Rorick Tr. & Savs. Bank

2. That at the time of the commencement of the above entitled action on or about June 19, 1930, this garnishee held as trustee and agent for the defendant Devon Syndicate, Ltd., a certain note and mortgage hereinafter described but on which no collections had been made at the time this garnishee filed its answer herein on or about January 15, 1931; however, a substantial amount was collected thereon during the year 1935, and this answering garnishee now has in its possession the sum of \$17,516.08 belonging to defendant Devon Syndicate, Ltd., subject to and covered by the attachment and garnishment served on this garnishee on or about July 1, 1930.

The above mentioned note, mortgage, assignment and declaration of trust are more fully described as follows:

On or about August 3, 1926, Lake Country Club Estates, Inc., a corporation organized and existing under and by virtue of the laws of the State of Florida, executed its promissory note for \$575,000.00 payable to the order of said Devon Syndicate, Ltd., a true copy of which note is attached to the affidavit of Paris E. Singer filed herein on or about May 1, 1931, in support of motion of Devon Syndicate, Ltd., that in order to secure the payment of interest and principal of said note, said Lake Country Club Estates, Inc., on or about the date of said note, executed and delivered to Devon Syndicate, Ltd., its mortgage upon certain lands and tenements and other properties, all of which were located in Palm Beach County, State of Florida, which said mortgage was recorded in the office of the Clerk of the Circuit Court of Palm Beach County, State of Florida, in Mortgage Book 204 at page 93; that on March 16, 1927, Devon Syndicate, Ltd., sold, transferred and assigned said note and all monies due and to grow due thereon with interest, to this garnishee, The Spitzer-Rorick Trust & Savings Bank, without recourse, the form of said endorsement being also shown in said Exhibit "B" attached to the affidavit of Paris E. Singer; that on March 16, 1927, said mortgage, together with the promissory note described therein and the monies due and to thereafter become due thereon with interest, were duly sold, transferred and assigned by defendant Devon Syndicate, Ltd., to The Spitzer-Rorick Trust and Savings Bank by duly executed written assignment, a true copy of which is attached to the said affidavit of Paris E. Singer and marked Exhibit "C."

That simultaneously with said transfers, The Spitzer-Rorick Trust & Savings Bank executed a Declaration of Trust acknowledging said transfers and setting forth

Supplemental Answer of Spitzer-Rorick Tr. & Savs. Bank

the terms and conditions upon which said note and mortgage were to be held by said bank, that a true copy of said Declaration of Trust is attached to the said affidavit of Paris E. Singer as Exhibit "D."

That in June, 1935, the said Spitzer-Rorick Trust & Savings Bank consummated a transaction under which it realized or collected on account of said trusteeship and agency the sum of \$17,576.08 over and above the expenses and charges of the said Trustee and its attorneys under said trust, and has since held said amount for the defendant Devon Syndicate, Ltd., subject to the attachment and garnishment issued in this case and served on this answering garnishee on or about July 1, 1930.

This garnishee further states that all of the above transactions and many others involving large amounts with the defendant Devon Syndicate, Ltd., were transacted and made by said defendant in the name of "Devon Syndicate, Ltd.," and that all contracts, documents and letters in connection therewith were executed by the defendant Paris E. Singer as the president of "Devon Syndicate, Ltd.,"; that the corporation described, in the affidavits of Paris E. Singer filed herein, as "Devon Syndicate, Limited," is one and the same corporation described in the petition filed herein and in the Exhibits attached to the said affidavit of Paris E. Singer as "Devon Syndicate, Ltd.," the latter being the name under which Devon Syndicate, Limited, transacted business in Ohio, Florida and other states in the United States.

3. That this answering garnishee is still the depository under a certain contract entitled "Everglades Club Company Voting Trust Agreement" described in the answer of this garnishee filed herein on or about January 15, 1931, and still holds, as therein set forth, all the shares of capital stock in the Everglades Club Company, a Florida corporation, amounting to 1,000 shares of no par value, but that by virtue of certain proceedings instituted on August 24, 1933, by The Spitzer-Rorick Trust & Savings Bank and H. C. Rorick, as Trustees under the first mortgage of the Everglades Club Company dated February 1, 1928, in the District Court of the United States for the Southern District of Florida, in Equity No. 1207 M, said first mortgage was foreclosed and all of the assets of the Everglades Club Company have since been sold, and the entire equity represented by said capital stock has been wiped out so that in the opinion of this garnishee said stock and the voting certificates issued in connection therewith are now worthless and of no value.

The Spitzer-Rorick Trust & Savings Bank,
By J. R. Easton, Vice-President.

Memorandum Opinion

State of Ohio, County of Lucas, ss:

J. R. Easton, being first duly sworn, says that he is a vice-president of The Spitzer-Rorick Trust & Savings Bank and has read its foregoing supplemental answer as garnishee in the above entitled cause; that he is duly authorized herein, and that the statements therein contained are true as he believes.

J. R. Easton.

Sworn to before me and subscribed in my presence this 21st day of April, 1936.

(Seal) Richard B. Swartzbaugh,
Notary Public, Lucas County, Ohio.
My commission expires Nov. 17, 1937.

MEMORANDUM OPINION

(Filed June 24, 1936.)

Hahn, J.:

On the oral argument of the motion to dissolve and dismiss the attachment and garnishment herein, it appeared that the defendant, Paris E. Singer, had died pending this action. The plaintiff announced that the action hereafter would proceed against the defendant Devon Syndicate, Ltd., alone.

The prior proceedings, which it is necessary to have in mind upon the motion of Devon Syndicate, Ltd., are as follows: (1) Petition filed in the Court of Common Pleas of Lucas County, Ohio, June 19, 1930; affidavit in attachment and garnishment filed in said court June 19, 1930; (2) second affidavit in attachment and garnishment filed in said court on the 27th of June, 1930. Both of these said affidavits were sworn and subscribed to by the plaintiff, Horton C. Rorick, before D. W. Drennan, who, it is claimed, was disqualified from administering said oath as will hereinafter appear. The said cause was duly removed to this court, and, on the 17th day of Feb-

Memorandum Opinion

ruary, 1936, (3) a supplemental and amended petition was filed in this court, and on the same day there was filed in this court a supplemental affidavit in attachment.

The defendant, Devon Syndicate, Ltd., specially appearing for that purpose, has moved the court to dissolve, dismiss and discharge the attachment and garnishment proceedings, based upon the two affidavits filed in the Court of Common Pleas of Lucas County, Ohio. The grounds of the motion are:

That the affidavits filed in the state court were insufficient under the statute, General Code Sec. 11828, for the reason that they did not allege:

(a) That the plaintiff *believed* that the garnishees had property of the defendant;

(b) That it did not *describe* the property within the meaning of the statute.

It is also claimed that the garnishment proceedings are void and of no effect, because the above two affidavits were sworn to before D. W. Drennan.

As to the proceedings in the court, the defendant filed a motion to quash the service on plaintiff's supplemental and amended petition, and to dismiss the pretended attachment and garnishment proceedings had in this court.

I have reached the conclusion that the attachment and garnishment based upon the two affidavits filed in the Court of Common Pleas of Lucas County, Ohio, must be discharged. I cannot escape the conclusion that Mr. Drennan was not qualified to administer the oath to the plaintiff. It appears from his testimony that he is admitted to practice in the state of Ohio and has been admitted to practice in this court. He was admitted to practice in 1916, and practically since that time has been in the employ of Spitzer-Rorick & Company, either as a partnership or as a corporation. The plaintiff has been a partner and president of Spitzer-Rorick & Company, and has occupied a place of such prominence that his name has been carried in the firm.

Under the law of Ohio, General Code Section 11523, an affidavit may be used to obtain a provisional remedy such as an attachment or a garnishment. An affidavit may be made before any person authorized to take depositions, General Code Section 11524; and Section 11532 provides: "The officer before whom depositions are taken must not be a relative or attorney of either party or otherwise interested in the event of the action or proceeding." (*Italics supplied.*)

It follows that as the law stood at the time the two

Memorandum Opinion

affidavits were filed in the state court, a notary was not qualified to take an affidavit unless he would also have been qualified to preside at the taking of depositions on behalf of the party whose affidavit he was taking. Mr. Drennan was an attorney for the partnership of which Mr. Rorick was a prominent member. He was later employed by a corporation of which Mr. Rorick was president. His livelihood depended in a large measure upon the good will of Mr. Rorick. I think he was sufficiently interested in any matter in which Mr. Rorick had a personal interest to disqualify him from presiding impartially at the taking of depositions. I do not think the courts should pronounce their benediction upon a practice which would permit one circumstanced as was Mr. Drennan to preside at the taking of depositions.

It required a statute in Ohio to enable an attorney as a notary to verify pleadings on behalf of his client. General Code, Sec. 11356. See the following authorities: Leavitt, etc., vs. Rosenberg, etc., 83 O.S. 230; Evans vs. Lawyer, 123 O.S. 62, 66; Rhineland Paper Co. vs. Pittsburgh Mining Co., 15 O.S.C., N.S. 286; Joslin-Schmidt Co. vs. Herrmann, 26 O.C.C., N.S. 348; Ward vs. Ward, 20 O.C.C. 136; 18 C.J. 622 et seq.; In re John H. Quick, 1 N.P., N.S. 57; National Cash Register Co. vs. Heyne, 10 N.P., N.S. 564; 4 Ohio Juris. 81, §54; Annotation, 74 A. L.R. 471. Compare: Tumey vs. Ohio, 273 U.S. 510, and Doherty vs. Cremering, (C.C.A. 6) 83 F. (2d) 388.

The affidavits filed in the state court, in my opinion, could not be amended by the supplemental affidavit filed in this court. Leavitt vs. Rosenberg, 83 O.S. 230, 240, 241. In Ohio the syllabus is the law of the case, and the fourth syllabus of the above case is as follows:

"The levy of the order of attachment, based upon an insufficient affidavit, cannot be upheld by an amendment of the affidavit."

The General Code, Section 11820, as amended (1935, 116 Ohio Laws, 370), can have no bearing in this case. See General Code of Ohio, Section 26. While Sections 11462, 11293, 11524, 11820, 11869 and 12052 have been amended so as to permit the taking of an affidavit by an attorney in the case, there seems to have been no amendment as to the garnishment statute, Section 11828 of the General Code of Ohio (116 Ohio Laws, 369-371).

If the affidavits filed in the Court of Common Pleas were defective because they were not sworn to before the proper officer, then the decision of Judge Westernhaver in *Cleveland & Western Coal Co. vs. J. H. Hillman & Sons*, 245 Fed. 200, applies. As a result of that application, it

Journal Entry

follows that the attempted attachment and garnishment in this court, based upon the supplemental and amended petition and the supplemental affidavit, is also void and of no effect because no personal service has been obtained upon the defendant. See *Big Vein Coal Co. vs. Read*, 229 U. S. 31. Compare *Clark vs. Wells*, 203 U. S. 164.

The case, therefore, stands in this court without service of any kind upon the defendant. If the plaintiff so desires, the action may remain pending for the purpose of procuring proper service. If the plaintiff does not desire that the action remain pending for that purpose, following the practice in *Cleveland & Western Coal Co. vs. J. H. Hillman & Sons*, supra, an order may be entered discharging the attachment and garnishment and striking plaintiff's petition from the files of this court. An exception may be noted on behalf of the plaintiff.

Geo. P. Hahn, District Judge.
Toledo, Ohio, June 24, 1936.

JOURNAL ENTRY
(Filed July 11, 1936.)

This 11th day of July, 1936, this cause came on to be heard on the motions of defendants, Devon Syndicate, Limited, to quash the pretended service of summons on said defendant, to set aside the return thereof and to dismiss the attempted attachment and garnishment, and was considered by the court on the evidence offered by said defendant in support of said motions, and the arguments and briefs of counsel; and the court being fully advised in the premises and upon consideration thereof finds that defendant, Devon Syndicate, Limited, has entered in this court a special appearance solely for the purpose of filing and presenting its motions above described; that defendant, Paris E. Singer, without entering his appearance herein, except a special appearance for the sole purpose of filing and presenting to the court a motion similar to the first of the motions of Devon Syndicate, Limited, herein described, had died pending this action and that plaintiff had announced that the action hereafter would proceed against defendant, Devon Syndicate, Limited, alone.

The court further finds that the notary, to wit, D. W. Drennan, before whom the affidavits in attachment and garnishment dated June 19th and June 27, 1930, respectively, and each of them, were sworn, was not a proper person to act as notary on such affidavits, or either of them, and that such affidavits, and each of them, were void and of no effect.

The court further finds that the attempt by plaintiff to amend the proceedings in attachment and garnishment originally had in the Court of Common Pleas of Lucas County, Ohio, after removal to this court by filing the supplemental affidavit in attachment and garnishment on February 17, 1936, was void and ineffective for the reason that no personal service had been obtained upon the defendant, Devon Syndicate, Limited, nor the defendant, Paris E. Singer.

The court further finds that it is unnecessary for it to pass upon the other grounds urged by Devon Syndicate, Limited, for the granting of its motions.

It is therefore ordered that the motions of defendant, Devon Syndicate, Limited, filed herein on the 26th day of January, 1931, and on the 11th day of April, 1936, respectively, and each of them, be and they are hereby granted to the extent that the attempted service of summons on defendant, Devon Syndicate, Limited, objected to by said motions, and each of them, be and it is hereby quashed and held for naught, and all returns of such service by the Sheriff of Lucas County, Ohio, and the Marshal of this court, be and each of them are hereby set aside.

It is further ordered that any and all of the publications of service of summons heretofore had herein, and any and all proofs thereof heretofore filed, be and they are hereby quashed and held for naught.

And the court being advised by plaintiff's counsel that the plaintiff desires no further time or opportunity to attempt to obtain personal service of process herein on the defendant, Devon Syndicate, Limited, it is further ordered that the attachment and garnishment herein be discharged, and the plaintiff's petition and amended supplemental petition be stricken from the files of this court at plaintiff's costs.

Plaintiff excepts to each and every provision of the foregoing findings and order.

Geo. P. Hahn
U. S. District Judge.

OK.—Fraser, Effler, Shumaker & Winn.
July 11, 1936.

*Order***ORDER**

(Filed Aug. 22, 1936.)

It is ordered that the plaintiff, Horton C. Rorick, be and he is hereby granted an extension of time in which to file his bill of exceptions herein, so that said bill of exceptions may be filed by said plaintiff on or before the 30th day of September, 1936.

Geo. P. Hahn,
U. S. District Judge.

ORDER

(Filed Sep. 29, 1936.)

Upon application of the plaintiff-appellant, the time within which the said plaintiff-appellant shall lodge his narrative form of testimony with the Clerk, and within which his said Bill of Exceptions shall be settled and filed herein, is extended to and including October 28, 1936, and the time to complete his record and file the same in the United States Circuit Court of Appeals, pursuant to the appeal sued out, is extended to and including October 28, 1936.

Geo. P. Hahn,
United States District Judge.

*Petition for Appeal***PETITION FOR APPEAL**

(Filed Sep. 29, 1936.)

To the Hon. Geo. P. Hahn, District Judge:

Now comes Horton C. Rorick by his attorneys, and respectfully shows that on the 11th day of July, 1936, the court entered a final judgment herein against your petitioner-plaintiff and in favor of the defendant.


The said cause is one wherein your petitioner-plaintiff sought, by means of the provisional remedies of attachment and garnishment, to subject property of the defendant to the satisfaction of his claims against the defendant; and the case is one in which under the legislation in force when the Act of January 31, 1928, was passed, a review could be had on writ of error.

Your petitioner feeling himself aggrieved by the said judgment aforesaid herewith petitions the court for an order allowing him to appeal to the Circuit Court of Appeals of the United States for the Sixth Circuit under the laws of the United States in such cases made and provided, for the reasons specified in the assignment of errors filed herewith.

Wherefore your petitioner prays that his appeal may be allowed, that a citation be issued as provided by law, and that a duly authenticated transcript of the record, proceedings, papers and exhibits upon which said judgment was entered and which are necessary to said appeal, may be sent to the United States Circuit Court of Appeals for the Sixth Circuit under the rules of such court in such cases made and provided, and that an order be made fixing the amount of security to be given by petitioner conditioned as the law directs.

Fraser, Effler, Shumaker & Winn,
Attorneys for Petitioner.

MICRO CARD 22

TRADE MARK 



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

530

38-69



ASSIGNMENT OF ERRORS

(Filed Sep. 29, 1936.)

Now comes Horton C. Rorick, plaintiff in the above entitled action, and in connection with his petition for appeal, files the following assignment of errors upon which he will rely in the prosecution of the appeal herewith petitioned for in said cause from the judgment of this court entered on the 11th day of July, 1936:

1. The court erred in granting the motion of the defendant Devon Syndicate, Limited, filed on the 26th day of January, 1930, for an order quashing service of summons on the defendant, and setting aside the return thereof, and dismissing the attachment and garnishment of defendant's property, and in failing to overrule said motion.

2. The court erred in granting the motion of defendant, Devon Syndicate, Limited, filed April 11, 1936, for an order quashing the pretended service of summons on plaintiff's supplemental and amended petition, and setting aside the return thereof, and dismissing the attachment and garnishment of defendant's property made on the supplemental affidavit and garnishment, and in failing to overrule said motion.

3. The court erred in setting aside, quashing and holding for naught all publications of service of summons on the defendant Devon Syndicate, Limited.

4. The court erred in discharging the attachment and garnishment of defendant's property secured by the plaintiff in the Court of Common Pleas of Lucas County, Ohio, prior to the removal of the cause herein to this court.

5. The court erred in dismissing and discharging the attachment and garnishment of defendant's property secured by the plaintiff pursuant to proceedings had herein and secured pursuant to plaintiff's affidavit in garnishment and his supplemental and amended petition.

6. The court erred in finding that the notary, to wit, D. W. Drennan, before whom the affidavits in attachment and garnishment dated June 19th and June 27th, 1930, respectively and each of them, were sworn, was not a proper person to act as notary on such affidavits, or either of them, and that such affidavits, and each of them, were void and of no effect.

7. The court erred in finding that the attempt by plaintiff to amend the proceedings in attachment and garnishment originally had in the Court of Common Pleas

Assignment of Errors

of Lucas County, Ohio, after removal to this court by filing the supplemental affidavit in attachment and garnishment on February 17, 1936, was void and ineffective.

8. The court erred in striking plaintiff's petition and his amended and supplemental petition from the files.

9. The court erred in failing and refusing to sustain the said attachments and garnishments secured by plaintiff of the property of the defendant, pursuant to the proceedings had in the Court of Common Pleas of Lucas County, Ohio, and thereafter, upon the removal of this cause, in this court, and in failing and refusing to permit the plaintiff herein to proceed to a trial by jury on the merits of the claims set forth in his supplemental and amended petition.

Wherefore, plaintiff prays that judgment heretofore entered herein on the 11th day of July, 1936, may be reversed, and that this cause may be remanded for further proceedings not inconsistent with law.

Fraser, Effler, Shumaker & Winn,
Attorneys for Plaintiff-Appellant.

H. W. Fraser
George R. Effler
R. B. Swartzbaugh
Of Counsel.

Order Allowing Appeal

ORDER ALLOWING APPEAL

(Filed Sep. 29, 1936.)

This cause came on to be heard upon the 29th day of September, 1936, upon the petition for appeal of the plaintiff, filed herein on the 29th day of September, 1936, praying for the allowance of an appeal from the judgment of this court entered on the 11th day of June, 1936, and upon consideration thereof, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Sixth Circuit, from the judgment heretofore entered herein, on the 11th day of July, 1936, be, and the same hereby is allowed, and that a transcript of the record, proceedings, papers and exhibits in this cause necessary to said appeal shall be duly authenticated and sent to the United States Circuit Court of Appeals for the Sixth Circuit.

It is further ordered that the bond on this appeal be, and is, fixed at Three Hundred (\$300.00) Dollars to secure the costs on appeal.

Geo. P. Hahn,
United States District Judge.

*Appeal Bond***APPEAL BOND**
(Filed Sept. 29, 1936)

Know All Men by These Presents, that Horton C. Rorick as principal, and the United States Fidelity & Guaranty Company, of Baltimore, Maryland, as surety, are held and firmly bound unto the defendant Devon Syndicate, Limited, a Canadian corporation, in the above entitled cause, in the full and just sum of Three Hundred (\$300.00) Dollars, to be paid to Devon Syndicate, Limited, its successors and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Whereas, on the 11th day of July, 1936, a judgment against the plaintiff and in favor of said defendant was entered in the above entitled cause, and the plaintiff, Horton C. Rorick, has obtained an order allowing an appeal from said judgment to the United States Circuit Court of Appeals for the Sixth Circuit.

Now, the condition of this obligation is such that if Horton C. Rorick shall prosecute said appeal to effect, and shall answer all costs that may be awarded against him if he shall fail to make good his plea on said appeal, then this obligation shall be void; otherwise to remain in full force and effect.

Horton C. Rorick,
United States Fidelity & Guaranty Company,
By Leo E. Regall. (Seal)

Approved:

Geo. P. Hahn,
United States District Judge.

*Citation on Appeal***CITATION ON APPEAL**

(Filed Oct. 1, 1936)

To Devon Syndicate, Limited, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said circuit, on the 28th day of October next, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Northern District of Ohio, wherein Horton C. Rorick is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as mentioned in said petition for appeal, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George P. Hahn, judge of the United States District Court at Toledo, Ohio, within said circuit, this 29th day of September, in the year of our Lord One Thousand Nine Hundred Thirty-six, and the Independence of the United States One Hundred Sixty:

Geo. P. Hahn,
United States District Judge.

Service of the above citation is hereby acknowledged, and the appearance of appellee is hereby entered.

Dated September ..., 1936.

.....
.....
Attorneys for Defendant-Appellee.

*Affidavit of Service of Citation on Appeal***AFFIDAVIT OF SERVICE OF CITATION ON
APPEAL**

(Filed Oct. 1, 1936)

State of Ohio, County of Lucas, ss.

R. B. Swartzbaugh, being first duly sworn, says that he is one of the duly authorized attorneys for Horton C. Rorick, plaintiff-appellant herein; that pursuant to the order of the court heretofore entered herein allowing plaintiff-appellant's appeal, a citation on appeal was issued by said court, a copy of which is attached hereto.

Affiant further says that he served said citation on appeal on Fred A. Smith, associated with the law firm of Welles, Kelsey & Cobourn, and one of the duly authorized attorneys for the defendant-appellee herein, at the office of Welles, Kelsey & Cobourn, on the 29th day of September, 1936, at about 2:00 o'clock P.M., by submitting said citation on appeal to said attorney for acknowledgment of service, together with a copy thereof; that said attorney refused to acknowledge said service, but received and retained a copy of said citation.

R. B. Swartzbaugh.

Sworn to before me and subscribed in my presence
this 30th day of September, 1936.

(Seal) Caroline McLaughlin,
Notary Public, Lucas County, Ohio.

*Citation on Appeal***CITATION ON APPEAL**

To Devon Syndicate, Limited, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said circuit, on the 28th day of October next, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Northern District of Ohio, wherein Horton C. Rorick is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as mentioned in said petition for appeal, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George P. Hahn, judge of the United States District Court at Toledo, Ohio, within said circuit, this 29th day of September, in the year of our Lord One Thousand Nine Hundred Thirty-six, and the Independence of the United States One Hundred Sixty.

.....
United States District Judge.

Service of the above citation is hereby acknowledged, and the appearance of appellee is hereby entered.

Dated September ..., 1936.

.....
Attorneys for Defendant-Appellee.

PLAINTIFF'S NARRATIVE BILL OF EXCEPTIONS

(Filed Oct. 6, 1936)

Be It Remembered, that the foregoing mentioned cause was heard before Honorable George P. Hahn, judge, on June 8th, 1936, and the following testimony was taken, to-wit:

Appearances: For the plaintiff, Harold W. Fraser, Esq.; George R. Effler, Esq., and Richard B. Swartzbaugh, Esq. For the defendant, Sidney D. L. Jackson, Esq., and Fred A. Smith, Esq., of Messrs. Welles, Kelsey & Cobourn.

The defendant called as a witness

DENNIS W. DRENNAN,

who, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Jackson:

My name is Dennis W. Drennan. I live at 3817 Willys Parkway, Toledo. I am a lawyer, employed by Spitzer Rorick & Company, incorporated now; it is an outgrowth of Spitzer Rorick & Company, a partnership. Prior to being employed by the corporation, I was employed by Spitzer Rorick & Company, the partnership. I had been employed by that partnership since January 25, 1916, and was continuously employed by the partnership up until the date of incorporation, since which time I have been employed by the corporation.

I was admitted to the bar just a few days prior to going to work for the Spitzer Rorick Company; I think it was January 6, 1916. I am a member of the bar of this court.

Mr. Horton C. Rorick was a member of the partnership of Spitzer Rorick & Company, and is an officer of the corporation. He holds the office of president. During the time that I was employed by Spitzer Rorick & Company, the partnership, it was doing a very active municipal bond business, and my work was that of handling transcripts relating to bond issues and I made preliminary examination of them myself and then passed them on to a better attorney, who had a reputation in that kind of work, for his approving opinion. That was Mr. Denison, of Squire, Sanders & Dempsey, and Mr. Harrison, who formerly practiced here. And then any requests by these attorneys for examination of the abstract was obtained by me and resubmitted to them.

I don't know anything about this case, but I knew such a case was pending. I have never discussed the case with Mr. Rorick. I am a notary public. I don't remember ever having any conversation with Mr. Rorick relative to the case. I knew that such a case was pending from things that have been said in the office, but he has never consulted me on the case. I have no distinct recollection of acting as notary public on certain affidavits that were filed in this case; if my name is on, I assume I did.

Mr. Jackson:

You will concede Mr. Drennan is the notary who notarized the affidavits of June 19, 1930, and June 25, 1930?

Mr. Fraser:

If those are the dates, we will.

The Witness:

I haven't any distinct recollection of subsequently acting as notary on certain answers of garnishees that were filed in this court on January 15th and 16th, 1931. That is my signature on the answer of Spitzer Rorick Trust & Savings Bank, garnishee, as notary. That is my signature on the answer of the Everglades Club Company, garnishee, filed in this court January 16, 1931, on page 5, as notary. That is my signature as notary on the answers of the garnishees Albert C. Foster, Horton C. Rorick, and Paris E. Singer, as voting trustees. I could not say as to whether those three answers were prepared in my office or the office of Spitzer Rorick & Company, except that I did not prepare them. I did not have anything to do with it, except as notary. I don't know whether they were prepared in the office of Spitzer Rorick & Company. I did not examine the typing and I don't imagine I could tell from that; I couldn't say.

Mr. Jackson:

If the court please, we have subpoenaed from the clerk's office of the Court of Common Pleas their file of papers in this particular case. Might I ask counsel if they will require me to call a witness to identify the file?

Mr. Fraser:

No.

Mr. Jackson:

There is a certified copy on file in this court, sent over at the time the action was removed but these are the original documents actually filed in the Court of Common Pleas.

The Court:

Do you claim there is any discrepancy between the copies and the originals?

Mr. Jackson:

No, the copies are accurate, if the court please. I merely got these to show the source of preparation. I direct your attention, Mr. Drennan, to the affidavit in attachment and garnishment filed in the Court of Common Pleas June 27, 1930. Is this your signature on that second page of that document, as notary?

The Witness:

That is my signature as notary. I would say it was not prepared by me. That is as far as I can go with it. I don't think there is anything there that I am able to recognize as coming from our office. It may have been prepared there; I am not an expert on typewriting.

Mr. Jackson:

It is stipulated that the original petition filed in the Court of Common Pleas on June 19, 1930, was prepared in the office of Fraser, Hiatt, Wall & Effler, and appears it was dictated by Mr. Harold W. Fraser; that the affidavit in attachment and garnishment filed in the Court of Common Pleas on June 19, 1930, was prepared in the office of Fraser, Hiatt, Wall & Effler, and was dictated by Mr. Ross W. Shumaker; that the affidavit in attachment and garnishment filed June 27th, 1930, in the Court of Common Pleas was prepared in the office of Mr. Horton C. Rorick, all except the præcipe, which is of a strange typing.

The Witness:

I don't remember of having anything to do with the affidavit in attachment and garnishment filed June 27, 1930; in fact, I don't remember of even signing my name, but it is my signature, nevertheless, as notary public, not as attorney. I really have no independent recollection on the matter.

I have, to some extent, as a part of my duties, occasionally investigated matters or appeared in court or investigated matters in the clerk's office for Spitzer Rorick & Company, perhaps in the last two years. I don't remember of ever appearing prior to that time. I believe I was at one time identified in a case for them in the Court of Common Pleas prior to two years ago. In fact, I don't know that I have represented them in a case in court even in the last two years, but I did some time ago.

I handle some private practice on my own, in addition to my work with Spitzer Rorick & Company and Mr. Rorick; all that comes to me, as a matter of fact. I do some work for the Spitzer Rorick Trust & Savings Bank. I think I represented the two Rorick boys one time in a justice court case, where they were charged with having driven a car with one headlight, or something like that. That is the only one I remember. My principal occupation is in the office of Spitzer Rorick, Inc., or Spitzer Rorick & Company, its predecessor, and I do what ever work comes up.

Mr. Fraser:

It may be conceded that upon no paper appearing here does Mr. Drennan appear as attorney of record?

Mr. Jackson:

It may be conceded.

CROSS EXAMINATION

By Mr. Fraser:

I never have been employed by Mr. Horton C. Rorick as his personal counsel in any case. I have not been consulted as attorney by Mr. Rorick or anyone else. I have no interest in this case in any way; shape or form, financially or otherwise, and I have not had before its inception, filing, or since at any time. I am not related to Mr. Rorick. My only connection with the case is the fact that on a few papers I acted as notary public.

Thereupon, counsel presented their arguments to the court.

*Order***ORDER**

(Filed Oct. 15, 1936)

This day this cause came on to be heard upon the application of the plaintiff-appellant for an order approving and settling the narrative bill of exceptions lodged and filed with the clerk of this court on October 6th, 1936, and the court finds the same to be a true, complete and properly prepared statement of all the evidence taken and given and of the proceedings had in this cause necessary for a review of the rulings assigned as error on the appeal herein, and that the same was lodged with and delivered to said clerk by the plaintiff-appellant within the time allowed therefor by order of this court, dated September 29, 1936, extending the time for settling and filing said narrative bill of exceptions herein to and including October 28, 1936.

Wherefore, it is ordered, adjudged and decreed that said narrative bill of exceptions be and it is allowed and approved as the statement of the evidence to be included in the record on appeal in this cause, and it is ordered to be included in the record on appeal herein.

Geo. P. Hahn,

United States District Judge.

Approved:

Fraser, Effler, Shumaker & Winn,
Counsel for Plaintiff-Appellant......
Counsel for Defendants-Appellees.

*Order***ORDER**

(Filed Oct. 28, 1936)

Upon the application of the plaintiff-appellant, the time for the plaintiff-appellant to complete and file his record, and for the making of the clerk's return to the citation on plaintiff-appellant's appeal in this case in the United States Circuit Court of Appeals, pursuant to the appeal sued out herein, is extended to and shall include January 28, 1937.

Geo. P. Hahn,
United States District Judge.

**AFFIDAVIT OF PARIS E. SINGER IN SUPPORT OF
MOTION OF DEVON SYNDICATE, LIMITED**
(Filed May 1, 1931)

Consulate of the United States of America,
Cairo, Egypt, ss.

Paris E. Singer, being first duly sworn deposes and says: That he is one of the defendants named in the above entitled proceeding; that at the time said proceeding was commenced and at all times thereafter, deponent was and now is president of Devon Syndicate, Limited, the other defendant in the above entitled proceeding (whose name was erroneously stated in Plaintiff's petition to be Devon Syndicate, Ltd.); that on or about the 22nd day of March, 1928, Everglades Club Company, a corporation of the State of Florida, one of the garnishees in said proceeding, made and executed five (5) promissory notes each in the sum of fifty thousand dollars (\$50,000), numbered 1 to 5, respectively, payable to the order of said Devon Syndicate, Limited, and having maturities as follows: Note No. 1, on or before March 30th, 1929; Note No. 2, on or before March 30, 1930; Note No.

Affidavit of Paris E. Singer

3, on or before March 30th, 1931; Note No. 4, on or before March 30th, 1932; Note No. 5, on or before March 30th, 1933; that true copies of said notes, together with the endorsements on the back thereof, are attached hereto in Exhibit E and made a part hereof; that on or about the first day of February, 1928, said Devon Syndicate, Limited, was the owner of one thousand (1,000) shares without par value of said Everglades Club Company, being all of the capital stock of said corporation; that on or about said date said Devon Syndicate, Limited, assigned and transferred said stock to Albert V. Foster, Horton C. Rorick (being the same Horton C. Rorick who is the plaintiff in the above entitled action), and Paris E. Singer (who is the deponent hereof) as trustees under a certain Voting Trust Agreement bearing date on or about February 1, 1928, pursuant to which agreement said stock was and is held by said trustees for the purposes and for the term therein set forth; that a true copy of said Voting Trust Agreement, marked Exhibit A, is attached to an affidavit of deponent heretofore or simultaneously herewith filed herein in support of the motion of Devon Syndicate, Limited, to quash service and vacate the pretended levies of attachment or garnishment herein, that reference is made to said Exhibit A and all the contents thereof and the same is made a part hereof; that pursuant to the terms of said Voting Trust Agreement the Voting Trustees agreed to issue upon the deposit of said 1,000 shares of Everglades Club Company, Voting Trust Certificates representing 500 shares of the stock of said Everglades Club Company to said Devon Syndicate, Limited, and Voting Trust Certificates representing 500 shares of stock in said company to Spitzer-Rorick & Company, a co-partnership engaged in the marketing and selling of investment securities, doing business and having an office in the City of Toledo, Ohio; that said Horton C. Rorick is one of the partners in said firm; that pursuant to the terms of said agreement, Voting Trust Certificates in the amounts stated were executed and delivered by said Voting Trustees to Devon Syndicate, Limited, and to Spitzer-Rorick & Company, such certificates being substantially in the form set forth in said Voting Trust Agreement.

That the reason for the issue of said Certificates to Spitzer-Rorick & Company was as follows: on or about February 1, 1928, said Spitzer-Rorick & Company entered into a written agreement with Everglades Club Company by which Spitzer-Rorick & Company agreed to underwrite

Affidavit of Paris E. Singer

and sell \$1,500,000 par value of bonds bearing 6½% interest, executed by said Everglades Club Company and secured by a first mortgage lien upon property of said Everglades Club Company located in the City of Palm Beach, Florida; that said Devon Syndicate, Limited, as an inducement to said Spitzer-Rorick & Company to enter into said contract to sell said bonds, and as an additional consideration in the premises, agreed to assign and transfer or to cause to be assigned and transferred to said Spitzer-Rorick & Company Voting Trust Certificates issued or to be issued pursuant to said Voting Trust Agreement of February 1, 1928, representing five hundred (500) shares or one-half (½) of the total authorized capital stock of said Everglades Club Company, upon the further understanding and agreement, however, that said Devon Syndicate, Limited, should have the power, right and option to repurchase said Voting Trust Certificates at any time prior to February 1, 1933, the price to be in the event of the exercise of the option, prior to February 1, 1930, ten thousand dollars (\$10,000), the price in the event of the exercise of such option from February 1, 1930, to February 1, 1931, fifteen thousand dollars (\$15,000), from February 1, 1931, to February 1, 1932, twenty thousand dollars (\$20,000), from February 1, 1932, to February 1, 1933, twenty-five thousand dollars (\$25,000); that said option agreement is evidenced by a letter dated February 1, 1928, signed by said Spitzer-Rorick & Company, a true copy of which is attached hereto marked Exhibit F, and made a part hereof; that said Devon Syndicate, Limited, heretofore and on the 31st day of March, 1923, issued for a valuable consideration, \$4,930,000 par value of debentures maturing April 1, 1953, and bearing interest at the rate of 8% per annum, payable quarterly on the first days of April, July, October and January in each year; that up to and including the first day of October, 1928, no interest was paid to the holders of said debentures as required by the terms thereof; that on the first day of October, 1928, one Cecil Mortimer Singer, a citizen and subject of Great Britain, then residing at Occombe House, Marldon, Paignton, in the County of Devon, England, was the registered holder and owner of sixty (60) of said debentures in the principal sum of ten thousand dollars (\$10,000) each, and as such was entitled to receive all the accrued and unpaid interest thereon; that on October 1, 1928, one Paris Graham Singer, a citizen and subject of Great Britain, then residing at 51 Gloucester Terrace, Hyde Park, in the County of London,

Affidavit of Paris E. Singer

England, was the registered holder and owner of sixty (60) of said debentures in the principal sum of ten thousand dollars (\$10,000) each, and as such was entitled to receive all the accrued and unpaid interest thereon; that on or about December 11, 1928, in consideration of the release by said Cecil Mortimer Singer and by said Paris Graham Singer, of all claims for unpaid interest upon said debentures to and including the interest which had become payable thereon on the first day of October, 1928, and in consideration of other good and valuable consideration Devon Syndicate, Limited, by instrument of assignment dated December 11, 1928, assigned to said Cecil Mortimer Singer and said Paris Graham Singer, all of its right, title and interest in and to said five notes for fifty thousand dollars (\$50,000) each, executed by Everglades Club Company, true copies of which are set forth in Exhibit E hereunto attached, a true copy of which assignment is attached hereto and marked Exhibit G, and also assigned for said considerations, all of its right, title and interest in and to said option agreement of February 1, 1928 (a true copy of which is attached hereto and marked Exhibit F), which last mentioned assignment is by written instrument dated also December 11, 1928, a true copy of which is attached hereto and marked Exhibit H; that by reason of said assignments all right, title and interest of Devon Syndicate, Limited, in and to said five promissory notes for fifty thousand dollars (\$50,000) each (Exhibit E), and in and to said Option Agreement (Exhibit F) was transferred to and became vested in said Cecil Mortimer Singer and said Paris Graham Singer; that in addition to said assignment of December 11, 1928, by which title in said notes was transferred to said assignees, each of said notes Nos. 1, 3, 4 and 5 were endorsed and made payable by endorsement to the order of said Cecil Mortimer Singer and said Paris Graham Singer, the names of the endorsees, however, being stated in said endorsements as Cecil M. Singer and P. G. Singer; that a true copy of said endorsements is set forth in Exhibit E hereunto annexed and made a part hereof; that said Note No. 2 is endorsed by said Devon Syndicate, Limited, and made payable to the order of said Paris Graham Singer, his name being designated as P. G. Singer as shown and set forth in a true copy of the endorsement contained in Exhibit E hereunto annexed; that the endorsement on said Note No. 2 to said Paris Graham Singer instead of to Paris Graham Singer and Cecil Mortimer Singer, the two assignees, was made at the request of and with the consent of both assignees in

Affidavit of Paris E. Singer

order to expedite the presentation thereof to the maker for payment; that said note No. 1 for fifty thousand dollars (\$50,000) became due and payable on or before March 30, 1929; that said note was sent by said Cecil Mortimer Singer and said Paris Graham Singer to the New York agency of the Bank of Montreal for collection, and on information and belief that said note was presented for payment on the 30th day of March, 1929, to said Everglades Club Company, which payment was refused as shown by the protest of L. C. Kolb, Notary Public of the State of Florida, a true copy of which protest is hereunto annexed and marked Exhibit J; that said Note No. 1 bears an endorsement on the back thereof of said Cecil M. Singer and said P. G. Singer, the original endorsees by which said note was made payable to the order of Agents Bank of Montreal at New York, a true copy of the form of such endorsement being set forth in Exhibit E attached hereto and made a part hereof; that said Note No. 1 also bears an endorsement by said L. C. Kolb, recording the protest for non-payment, a true copy of which endorsement is set forth in Exhibit E hereunto annexed and made a part hereof; that upon information and belief said Note No. 2 for fifty thousand dollars (\$50,000) made payable on or before March 30th, 1930, and endorsed by Devon Syndicate, Limited, to the order of P. G. Singer as hereinbefore set forth, was presented by said Paris Graham Singer in person to said Everglades Club Company with demand for payment, which payment was refused.

P. G. Singer.

Subscribed and sworn to before me this 16th day of January, 1931.

(Seal)

Easton T. Kelsey,
American Vice Consul.

Stamped: American Foreign Service, \$2.00 Fee Stamp.

*Affidavit of Paris E. Singer***EXHIBIT E**

No. 1 \$50,000.00

Palm Beach, Florida, March 22, 1928

On or before March 30, 1929, for value received, we promise to pay to the order of Devon Syndicate, Ltd., Fifty thousand and 00/100.....Dollars at Palm Beach, Florida, with interest thereon at the rate of per cent. per annum from until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of nonpayment and protest; and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at per cent. per annum, payable semi-annually.

Everglades Club Company,

By P. E. Singer, President (Seal)

A. W. MacDougall, Secretary. (Seal)

Due....., 19....

(Endorsements)

Pay to the order of Cecil M. Singer and P. G. Singer
Devon Syndicate, Ltd.

(Signed) P. E. Singer, President.

J. Bransbury, Secretary.

Pay to the order of Agents Bank of Montreal
New York

(Signed) Cecil M. Singer,

P. G. Singer

(Stamp)

Palm Beach, Fla., Mar. 30, 1929

Protested for Non-Payment

L. C. Kolb

Notary Public State of Florida at Large

My Commission expires Dec. 24, 1929.

No. 2 \$50,000.00

Palm Beach, Florida, March 22, 1928

On or before March 30, 1930, for value received, we promise to pay to the order of Devon Syndicate, Ltd., Fifty thousand and 00/100.....Dollars at Palm Beach, Florida, with interest thereon at the rate of per cent. per annum from until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment and protest; and in case suit shall

Affidavit of Paris E. Singer

be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at per cent. per annum, payable semi-annually.

Everglades Club Company,

By P. E. Singer, President (Seal)

A. W. MacDougall, Secretary. (Seal)

Due....., 19....

(Endorsement)

Pay to the order of P. G. Singer

(Signed) P. E. Singer, President,
Devon Syndicate, Ltd.

No. 3 \$50,000.00

Palm Beach, Florida, March 22, 1928

On or before March 30, 1931, for value received we promise to pay to the order of Devon Syndicate, Ltd., Fifty thousand and 00/100.....Dollars, at Palm Beach, Florida, with interest thereon at the rate of per cent. per annum from until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment and protest; and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at per cent. per annum, payable semi-annually.

Everglades Club Company,

By P. E. Singer, President. (Seal)

A. W. MacDougall, Secretary. (Seal)

Due....., 19....

(Endorsement)

Pay to the order of Cecil M. Singer and P. G. Singer
Devon Syndicate, Ltd.

(Signed) P. E. Singer, President.

No. 4 \$50,000.00

Palm Beach, Florida, March 22, 1928.

On or before March 30, 1932, for value received, we promise to pay to the order of Devon Syndicate, Ltd., Fifty thousand and 00/100.....Dollars at Palm Beach, Florida, with interest thereon at the rate of per cent. per annum from until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment and protest; and in case suit shall

Affidavit of Paris E. Singer

be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at per cent. per annum, payable semi-annually.

Everglades Club Company,
By P. E. Singer, President. (Seal)
A. W. MacDougall, Secretary. (Seal)

This note is subject to extension from time to time until paid if the finances of your company so require.

Due....., 19....

(Endorsement)

Pay to the order of Cecil M. Singer and P. G. Singer.
Devon Syndicate, Ltd.

(Signed) P. E. Singer, President.

No. 5 \$50,000.00

Palm Beach, Florida, March 22, 1928.

On or before March 30, 1933, for value received, we promise to pay to the order of Devon Syndicate, Ltd., Fifty thousand and 00/100.....Dollars at Palm Beach, Florida, with interest thereon at the rate of per cent. per annum from until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment and protest; and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at per cent. per annum, payable semi-annually.

Everglades Club Company,
By P. E. Singer, President. (Seal)
A. W. MacDougall, Secretary. (Seal)

This note is subject to extension from time to time until paid if the finances of your company so require.

Due....., 19....

(Endorsement)

Pay to the order of Cecil M. Singer and P. G. Singer,
Devon Syndicate, Ltd.

(Signed) P. E. Singer, President.

EXHIBIT F

Toledo, Ohio, Feby. 1st, 1928.

Devon Syndicate, Ltd.,
Montreal, Canada.

Attention—Paris E. Singer, President.

Dear Sirs,

Referring to our agreement of even date herewith under which you assign and transfer to us Voting Trust Certificates representing five hundred (500) Shares or one half ($\frac{1}{2}$) of total authorized capital stock of the Everglades Club Company

We hereby confirm our agreement that as part consideration of the said assignment and transfer, we agree to give you the sole and exclusive right to repurchase said Voting Trust Certificates at any time prior to February 1st, 1933. The price to be paid us by you in case of your exercising your said option at any time prior to February 1st, 1930, is \$10,000; the price to be paid us at any time from February 1st, 1930, to February 1st, 1931, is \$15,000; the price to be paid us from February 1st, 1931, to February 1st, 1932, is \$20,000; the price to be paid us from February 1st, 1932, up to February 1st, 1933, is \$25,000.

The foregoing is in favor of yourself, your successors, assigns and transferees.

Yours very truly,

H.C.R. W.S.D.

(Sgd) Spitzer-Rorick & Co.

For & on behalf of
Devon Syndicate Ltd.
P. E. Singer, President

EXHIBIT G

This Assignment made this eleventh day of December, 1928 Between Devon Syndicate Limited a Company incorporated under the Laws of the Dominion of Canada having its office at 120 St. James Street, Montreal in the Dominion of Canada (hereinafter called "the Company") of the one part and Cecil Mortimer Singer of Occombe House Marldon Paignton in the County of Devon England and Paris Graham Singer of 51 Gloucester Terrace Hyde Park in the County of London England (hereinafter collectively referred to as "the Debenture Holders") of the other part Whereas the said Cecil Mortimer Singer is the registered holder of Sixty

Debentures for Ten thousand dollars each issued by the Company all dated the 31st day of March 1923 and Numbered A 121 to A 180 inclusive bearing interest at the rate of Eight per cent. per annum payable quarterly on the first days of April July October and January in each year and upon which said Debentures there is a considerable sum of money now due and outstanding and unpaid by the Company to the said Cecil Mortimer Singer for interest thereon down to and including the interest on the said Debentures which became payable on the 1st day of October last as the Company hereby admits and declares And Whereas the said Paris Graham Singer is the registered holder of Sixty Debentures for Ten thousand dollars each issued by the Company all dated the 31st day of March 1923 and Numbered A 181 to A 240 inclusive bearing interest at the rate of Eight per cent. per annum payable quarterly as aforesaid and upon which said Debentures there is a considerable sum of money now due and outstanding and unpaid by the Company to the said Paris Graham Singer for interest thereon down to and including the interest on the said Debentures which became payable on the 1st day of October last as the Company hereby admits and declares And Whereas Everglades Club Company a Company incorporated under the Law of the State of Florida U. S. A. is indebted to the Company in

(a) the sum of Fifty thousand (\$50,000) Dollars secured by a note therefor dated the 22nd day of March 1928 given by the said Everglades Club Company to the Company and payable according to the tenor thereof on or before the 30th day of March 1929

(b) the sum of Fifty thousand (\$50,000) dollars secured by a note therefor dated the 22nd day of March 1928 given by the said Everglades Club Company to the Company and payable according to the tenor thereof on or before the 30th day of March 1930

(c) the sum of Fifty thousand (\$50,000) dollars secured by a note therefor dated the 22nd day of March 1928 given by the said Everglades Club Company to the Company and payable according to the tenor thereof on or before the 30th day of March 1931

(d) the sum of Fifty thousand (\$50,000) dollars secured by a note therefor dated the 22nd day of March 1928 given by the said Everglades Club Company to the Company and payable according to the tenor thereof on or before the 30th day of March 1932, and

Affidavit of Paris E. Singer

(e) the sum of Fifty thousand (\$50,000) Dollars secured by a note therefor dated the 22nd day of March 1928 given by the said Everglades Club Company to the Company and payable according to the tenor thereof on or before the 30th day of March 1933.

And Whereas the Company has agreed to assign to the Debenture Holders the said amounts payable to the Company by the said Everglades Club Company as aforesaid in consideration of each of the Debenture Holders giving the release hereinafter contained And Whereas it is in the interest of the Company that the said Agreement shall be carried out Now Therefore in consideration of the premises and of the releases hereinafter contained and in consideration of the sum of 1 Dollar each party to the other party paid the receipt whereof is hereby acknowledged This Deed Witnesseth as follows:

1. The Company hereby bargains sells assigns transfers and sets and delivers over unto the debenture holders their executors administrators and assigns all of its right title and interest in and to:

First—All That the sum of Fifty thousand dollars payable by Everglades Club Company to Devon Syndicate Limited on or before 30th March 1929 under Promissory Note dated 22nd March 1928 drawn by Everglades Club Company to the order of Devon Syndicate Limited.

Secondly—All That the sum of Fifty thousand dollars payable by Everglades Club Company to Devon Syndicate Limited on or before the 30th day of March 1930 under Promissory Note dated the 22nd day of March 1928 drawn by Everglades Club Company to the order of Devon Syndicate Limited.

Thirdly—All That the sum of Fifty thousand dollars payable by Everglades Club Company to Devon Syndicate Limited on or before the 30th day of March 1931 under Promissory Note dated the 22nd day of March 1928 drawn by Everglades Club Company to the order of Devon Syndicate Limited.

Fourthly—All That the sum of Fifty thousand dollars payable by Everglades Club Company to Devon Syndicate Limited on or before the 30th day of March 1932 under Promissory Note dated the 22nd day of March 1928 drawn by Everglades Club Company to the order of Devon Syndicate Limited, and

Fifthly—All That the sum of Fifty thousand dollars payable by Everglades Club Company to Devon Syndicate Limited on or before the 30th day of March 1933 under Promissory Note dated the 22nd day of March

Affidavit of Paris E. Singer

1928 drawn by Everglades Club Company to the order of Devon Syndicate Limited.

2. The Company hereby constitutes and appoints the said Cecil Mortimer Singer and Paris Graham Singer and each of them its attorneys and/or attorney in its name or otherwise to take all legal measures which may be proper or necessary for the complete recovery and enjoyment of all sums due and payable under and by virtue of the assigned premises.

3. The said Cecil Mortimer Singer hereby releases the Company from all claims for unpaid interest on the said Debentures of the Company Numbered A 121 to A 180 inclusive down to and including the interest which became payable thereon on the 1st day of October last.

4. The said Paris Graham Singer hereby releases the Company from all claims for unpaid interest on the said Debentures of the Company Numbered A 181 to A 240 inclusive down to and including the interest which became payable thereon on the 1st day of October last.

In Witness whereof the Company has caused these presents to be signed in its name by its duly authorized Officer and its Corporate Seal to be hereto affixed and the said Cecil Mortimer Singer and Paris Graham Singer have hereunto set their hands and seals the day and year first above written.

For and on behalf of

Devon Syndicate Limited (Seal)

P. E. Singer President.

Cecil M. Singer (Seal)

P. G. Singer (Seal)

Signed for and on behalf of Devon Syndicate Limited by Paris Eugene Singer its President in the presence of J. Bransbury, Secr. 3 Pancras Lane, London, E. C. 4.

The Corporate Seal of Devon Syndicate Limited was hereunto affixed in the presence of P. E. Singer President, J. Bransbury Secretary.

Signed Sealed and Delivered by the above named Cecil Mortimer Singer in the presence of J. Bransbury as above.

Signed Sealed and Delivered by the above named Paris Graham Singer in the presence of J. Bransbury as above.

*Affidavit of Paris E. Singer***EXHIBIT H.**

This Assignment made the eleventh day of December 1928 Between Devon Syndicate Limited a company incorporated under the laws of the Dominion of Canada and having its office at 120 St. James Street in the City of Montreal Canada (hereinafter called "the Company") of the one part and Cecil Mortimer Singer of Oecombe House, Marlton Paignton in the County of Devon England and Paris Graham Singer of 51 Gloucester Terrace Hyde Park London England (hereinafter referred to as "the Assignees") of the other part Whereas by an Agreement contained in a letter dated the 1st day of February 1929 addressed by Spitzer Rorick & Co. of Toledo Ohio, U.S.A., to the Company a copy whereof is set out in the Schedule hereto certain rights were given to the Company in respect to certain Voting Trust Certificates relating to the Capital Stock of Everglades Club Company a Company incorporated under the Laws of the State of Florida United States of America And Whereas for divers good and valuable considerations passing from the Assignees to the Company the Company has agreed to assign to the Assignee All its rights under the said Agreement of the 1st day of February 1928 And Whereas it is in the interest of the Company that the said Agreement shall be carried out Now therefore in consideration of the premises and in consideration of the sum of One Dollar paid by the Assignees to the Company (the receipt whereof is hereby acknowledged) This Deed Witnesseth as follows:-

1. The Company hereby bargains sells assigns transfers and sets over unto the Assignees their executors administrators and assigns All its rights title and interest under the said Agreement of the said 1st day of February, 1928.

2. The Company hereby constitutes and appoints the said Cecil Mortimer Singer and Paris Graham Singer their attorneys in its name or otherwise to take all legal measures which may be proper or necessary for obtaining the full enjoyment of the premises assigned.

In Witness whereof the Company has caused these presents to be signed in its name by its duly authorized officer and its Corporate Seal to be hereto affixed the day and year first before written.

Devon Syndicate Limited
(Seal) By P. E. Singer President

Affidavit of Paris E. Singer

The Schedule above referred to:-

Toledo, Ohio, Feby. 1st, 1928.

Devon Syndicate Ltd.,
Montreal, Canada.

Attention—Paris E. Singer, President.

Dear Sirs,

Referring to our agreement of even date herewith under which you assign and transfer to us Voting Trust Certificates representing Five hundred (500) Shares or one half ($\frac{1}{2}$) of total authorized capital stock of the Everglades Club Company.

We hereby confirm our agreement that as part consideration of the said assignment and transfer, we agree to give you the sole and exclusive right to repurchase said voting Trust Certificates at any time prior to February 1st 1933. The price to be paid us by you in case of your exercising your said option at any time prior to February 1st 1930 is \$10,000: the price to be paid us at any time from February 1st 1930 to February 1st 1931 is \$15,000: the price to be paid us from February 1st 1931 to February 1st 1932 is \$20,000: the price to be paid us from February 1st 1932 up to February 1st 1933 is \$25,000.

The foregoing is in favor of yourself, your successors assigns or transferees.

Yours very truly,

(Sgd) Spitzer-Rorick & Co.

H. C. R. W. S. D.

For and on behalf of

Devon Syndicate Ltd.

P. E. Singer President

Signed for and on behalf of Devon Syndicate Limited by Paris Eugene Singer its President in the presence of J. Bransbury Solicitor 3 Pancras Lane, London, E. C. 4.

The Corporate Seal of Devon Syndicate Limited was hereunto affixed in the presence of P. E. Singer President J. Bransbury Secretary. (Seal)

*Affidavit of Paris E. Singer***EXHIBIT J.**

United States of America

State of Florida, Palm Beach County, ss.

3/30/29.

On the 30th day of March in the year of our Lord one thousand nine hundred and twenty-nine at the request of The First National Bank in Palm Beach, Florida, did present the original Instrument hereunto annexed, to a person in charge of the place, where the same is made payable, in the City of Palm Beach, Florida, and demanded payment thereof, which was refused.

Whereupon, I, the said Notary, at the request aforesaid, did Protest, and by these presents do publicly and solemnly Protest, as well against the maker and endorser of said Instrument as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages and interest already incurred, and to be hereafter incurred, for want of payment of the same.

Witness my hand and official seal at said City.

(Sgd.) L. C. Kolb,

Notary Public.

Notary Public, State of Florida
at Large. My Commission
expires December 24, 1929.

Official stamp of
L. C. Kolb,
Notary Public.

LETTERS PATENT

(Filed May 1, 1931)

Incorporating "Devon Syndicate, Limited," (as a Private Company). Dated 26th March, 1923. Recorded 28th March, 1923. A. G. Learoyd, Acting Dep. Registrar General of Canada.

CANADA

By the Honourable Arthur Bliss Copp, Secretary of State of Canada.

To all to whom these presents shall come, or whom the same may in anywise concern. Greeting:

Whereas in and by the 1st part of Chapter 79 of the Revised Statutes of Canada, 1906, known as "The Companies Act," and Amending Acts, it is amongst other things in effect enacted that the Secretary of State of Canada may, by Letters Patent under his seal of office, grant a charter to any number of persons, not less than five, who, having complied with the requirements of the Act and Amending Acts, apply therefor, constituting such persons and others who thereafter become shareholders in the company thereby created, a body corporate and politic for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except the construction and working of railways or of telegraph or telephone lines, the business of banking, the issue of paper money, the business of insurance, the business of a loan company or the business of a trust company, upon the applicants therefor establishing to the satisfaction of the Secretary of State due compliance with the several conditions and terms in and by the said Act and Amending Acts set forth and thereby made conditions precedent to the granting of such charter.

And whereas, Edward Stuart McDougall and Winchester Henry Biggar, Advocates; Darley Burley-Smith, Clerk; Frank Ashworth, Accountant; and Bertha Hodgson, Secretary, all of the City of Montreal, in the Province of Quebec, have made application for a charter under the said Act and Amending Acts, constituting them and such others as may become shareholders in the company thereby created a body corporate and politic, under the name of

"DEVON SYNDICATE, LIMITED,"

for the purposes hereinafter mentioned, and have satisfactorily established the sufficiency of all proceedings required by the said Act and Amending Acts to be taken, and the truth and sufficiency of all facts required to be established previous to the granting of such Letters Patent, and have filed in the Department of the Secretary of State a duplicate of the memorandum of agreement executed by the said applicants in conformity with the provisions of the said Act and Amending Acts.

Now Know Ye that I, the said Arthur Bliss Copp, Secretary of State of Canada, under the authority of the hereinbefore in part recited Act and Amending Acts, do by these Letters Patent, constitute the said Edward Stuart McDougall, Winchester Henry Biggar, Darley Burley-Smith, Frank Ashworth and Bertha Hodgson, and all others who may become shareholders in the said company, a body corporate and politic, by the name of .

"DEVON SYNDICATE, LIMITED"

with all the rights and powers given by the said Act and Amending Acts and for the following purposes and objects, namely :

.

The place within the Dominion of Canada which is to be the chief place of business of the said company, is the City of Montreal in the Province of Quebec.

The capital stock of said company shall be Fifty Thousand (\$50,000) dollars, divided into Five Hundred (500) shares of one Hundred (\$100) dollars each, subject to the increase of such capital stock under the provisions of said Act and Amending Acts.

And it is hereby ordained and declared that the Company shall be deemed to be a private company under the provisions of the Companies' Act and its amendments, with the following restrictions, viz:

1. No shareholder shall have the right to transfer shares registered in his name without the consent of the directors of the company.

2. The number of its shareholders or members, exclusive of persons who are in the employment of the company, and of persons who, having been formerly in the employment of the company, were while in such employment, and have continued after the termination of such employment, to be members of the company, shall not exceed fifty;

Letters Patent

3. Any invitation to the public to subscribe for any shares or debentures of the company shall be prohibited.

That the said Edward Stuart McDougall, Winchester Henry Biggar, Darley Burley-Smith, Frank Ashworth and Bertha Hodgson, are to be the first or provisional directors of the said company.

Provided always that nothing in these presents expressed or contained shall be taken to authorize the construction and working of railways or of telegraph or telephone lines, the business of banking, the issue of paper money, the business of insurance, the business of a loan company or the business of a trust company, by the said company.

Given under my hand and seal of office, at Ottawa, this Twenty-Sixth day of March, 1923.

Thomas Mulvey (L.S.)

Under-Secretary of State.

Endorsements:

Letters Patent incorporating "Devon Syndicate, Limited" (as a Private Company). Dated 26th March, 1923.

Department of the Secretary of State of Canada
Registrar's Branch,

Ottawa, 28th November, 1930.

I hereby certify the within to be a true and faithful copy of the record of the original Letters Patent as entered in Liber 289, Folio 209.

● Thomas Mulvey,
Dep. Registrar General of Canada.

A. Gi-B. D. W.

*Affidavit of Wendell H. Laidley***AFFIDAVIT OF WENDELL H. LAIDLEY**

Consulate of the United States of America:

Wendell H. Laidley, being first duly sworn, deposes and says that he is Assistant Secretary of Devon Syndicate, Limited, one of the defendants named in the above entitled proceeding (whose name, as deponent is informed and believes, was erroneously stated in the plaintiff's petition to be Devon Syndicate, Ltd.); that attached hereto is a true copy of the letters patent incorporating said Devon Syndicate, Limited, duly certified to be a true copy of said letters patent by the Deputy Registrar General of Canada.

W. H. Laidley.

Subscribed and sworn to before me this 29th day of January, 1931.

S. J. Fletcher
Samuel J. Fletcher,
Consul of the United States of America.

Stamped: American Foreign Service \$2.00 Fee.
Service No. 186.

AFFIDAVIT FOR CONSTRUCTIVE SERVICE

(Filed Feb. 17, 1936.) /

State of Ohio, County of Lucas, ss.

Horton C. Rorick, being first duly sworn, says that he is the plaintiff in the above entitled action; that defendant, Devon Syndicate, Limited, also sometimes known as Devon Syndicate, Ltd., is a foreign corporation, organized and existing under and by-virtue of the laws of the Dominion of Canada, the last known address of its principal office being the Transportation Building in the City of Montréal, Province of Quebec, Dominion of Canada, and is not a resident or citizen of the State of Ohio, nor does it maintain an office or place of business in the State of Ohio; that service of summons cannot be made upon said defendant in the State of Ohio; that this action is one in which it is sought by provisional remedies of attachment and/or garnishment to take and to appropriate property of said defendant, Devon Syndicate, Limited, in the possession of others within the jurisdiction of this court, and to subject the same to the satisfaction of plaintiff's claim, and comes within the provisions of General Code, Section 11292 of the laws of Ohio, wherein service by publication may be made on said defendant.

Horton C. Rorick.

Sworn to before me and subscribed in my presence this 23rd day of January, 1936.

(Seal) Caroline McLaughlin,
Notary Public, Lucas County, Ohio.

**LAW SUMMONS ON SUPPLEMENTAL AND
AMENDED PETITION**

District Court of the United States

Northern District of Ohio, Western Division.

The President of the United States of America

To the Marshal of the Northern District of Ohio—Greeting:

You are hereby commanded to notify Devon Syndicate, Limited, and Paris E. Singer, that they have been sued by Horton C. Rorick, in the District Court of the United States, within and for the Western Division of the Northern District of Ohio, and that unless they answer by the 2nd day of May, A. D. 1936, the petition of the said plaintiff against them filed in the clerk's office of said court, at Toledo, Ohio, in said division and district, such petition will be taken as true, and judgment will be rendered accordingly.

You will make due return of this summons on the 13th day of April, A. D. 1936.

Witness, the Honorable Paul Jones, the Honorable Geo. P. Hahn, the Honorable S. H. West, and the Honorable John M. Killits, District Judges of the United States, and the seal of said Court, this 4th day of April, A. D. 1936, and in the 160th year of the Independence of the United States of America.

F. J. Denzler, Clerk.

(Seal)

By George H. Blossom,

Deputy Clerk.

Indorsement: "Amount Claimed, \$400,000.00 with interest at 6% per annum from June 12, 1930."

Returnable April 13, 1936. Answer day May 2, 1936. \$25.00 deposited for costs.

Fraser, Effler, Shumaker & Winn,

Plaintiff's Attorneys.

U. S. MARSHAL'S RETURN

(Filed April 15, 1936)

The United States of America

Northern District of Ohio, ss:

Received this writ at Toledo, Ohio, on April 4, 1936, and on April 6th, 1936, at Toledo, Ohio, the within-named Devon Syndicate, Ltd., and Paris E. Singer could not be found in this district.

George J. Keinath,

U. S. Marshal.

By Jesse T. Sell,

Deputy.

c
r
r
n
t
v
l
E
J
e
h
o
o

*Praeipice for Transcript on Appeal***PRAEIPICE FOR TRANSCRIPT ON APPEAL**

(Filed Oct. 6, 1936.)

To the Clerk:

Please prepare transcript of record in the above entitled action to be filed in the United States Circuit Court of Appeals for the Sixth Circuit, pursuant to the appeal allowed in said action, and include in said transcript of record the following papers and orders:

1. Title page.
2. Caption.
3. Transcript of proceedings in the Court of Common Pleas of Lucas County, Ohio, filed December 30, 1930.
4. Answer of The Spitzer-Rorick Trust & Savings Bank as garnishee filed January 15, 1931.
5. Motion of Devon Syndicate, Ltd., to quash service and dismiss the attachment filed January 26, 1931.
6. Order granting plaintiff leave to file Supplemental and Amended Petition and Supplemental Affidavit in Garnishment, filed February 17, 1936.
7. Supplemental and Amended Petition, filed February 17, 1936.
8. Supplemental Affidavit in Garnishment filed February 17, 1936.
9. Return of marshal on service of order of garnishment on The Spitzer-Rorick Trust & Savings Bank and the notice to said garnishee, filed on February 26, 1936.
10. Motion of Devon Syndicate, Ltd., to quash service of summons and dismiss attachment, filed April 11, 1936.
11. Answer of The Spitzer-Rorick Trust & Savings Bank as garnishee, filed April 22, 1936.
12. Memorandum Opinion of Judge Hahn, filed June 24, 1936.
13. Journal Entry filed July 11, 1936.
14. Order extending time to file Bill of Exceptions entered and filed August 22, 1936.
15. Order extending time to October 28, 1936, to lodge narrative form of testimony and file and settle Bill of Exceptions, filed September 29, 1936.
16. Petition for Appeal, filed September 29, 1936.
17. Assignment of Errors, filed September 29, 1936.
18. Order Allowing Appeal and fixing the amount of the appeal bond, filed September 29, 1936.
19. Appeal Bond, filed September 29, 1936.
20. Citation on Appeal, filed October 1, 1936.

ORDER

(Filed Dec. 21, 1936)

It is hereby ordered that the clerk of this court be and he is hereby authorized to certify that the printed record of this case as received from the printer contains a full, true and complete copy of the record and all proceedings in this case, including the petition for appeal, assignment of errors, order allowing appeal, and the bond on appeal, in accordance with praecipe for transcript and counter-praecipe for transcript filed herein, without further or other actual comparison with the original papers filed in this case.

Geo. P. Hahn,
United States District Judge.

Approved:

Fraser, Effler, Shumaker & Wimm,
Attorneys for Plaintiff-Appellant.

Praeipie for Transcript on Appeal

21. Affidavit of Service of Citation on Appeal, filed October 1, 1936.

22. Plaintiff's Narrative Bill of Exceptions and Order approving the same, filed October 15, 1936.

23. All Orders entered subsequently hereto extending time for filing transcript in the Circuit Court of Appeals and for filing defendant's Counter-Praeipie, and any other orders or papers entered or filed herein subsequently hereto.

24. This Praeipie for Transcript of record on appeal.

25. Stipriation between counsel relative to certification of record, and all other stipulations between counsel for the parties hereinafter filed, relative to the record on appeal.

26. Clerk's certificate.

Please deliver papers to the H. J. Chittenden Publishing Company, Toledo, Ohio, for printing.

Fraser, Effler, Shumaker & Winn,
Attorneys for Plaintiff.

Harold W. Fraser,
George R. Effler,
R. B. Swartzbaugh,
Of Counsel.

To Messrs. Welles, Kelsey & Cobourn,
George D. Welles, Fred Fuller,
and Fred A. Smith,

Attorneys for Defendant, Devon Syndicate, Ltd.

You are hereby notified that the plaintiff-appellant in the above entitled action will file forthwith the foregoing praecipie indicating the portions of the record he desires to have incorporated in the transcript of record on appeal.

Dated October 2, 1936.

Harold W. Fraser,
George R. Effler,
R. B. Swartzbaugh,
Of Counsel for Horton C. Rorick,
Plaintiff-Appellant.

Service of the foregoing praecipie and receipt of copies thereof are hereby acknowledged on behalf of said defendant-appellee, Devon Syndicate, Ltd., this 2nd day of October, 1936.

.....
Of Counsel for said Defendants-Appellees.

COUNTER PRAECIPE

(Filed Oct. 14, 1936)

To the Clerk:

Appellee, Devon Syndicate, Limited, for the sole purpose of having incorporated in the record an appeal additional papers which are necessary to fully present the questions raised by the appeal herein with respect to its motion for an order quashing the pretended service of summons and setting aside the return thereof and dismissing the pretended attachment and garnishment, and its motion for an order quashing the pretended service of summons on the supplemental and amended petition and setting aside the return thereof and dismissing the pretended attachment and garnishment made on the supplemental affidavit in garnishment, and not intending hereby to waive any question of the sufficiency of the service of process, or the want of service of process on it, but expressly reserving all questions of service of process, jurisdiction and want of service of process on it, and not entering or intending to enter its appearance herein, hereby requests, pursuant to the provisions of Rule 15 of the Rules of the United States Circuit Court of Appeals for the Sixth Circuit, that you incorporate into the transcript of record, on the appeal herein, in addition to the portions of the record indicated by appellant herein by his praecipe to be included in the transcript of record herein, the following:

	Filing Date	Filing Number in District Court
1. Affidavit of Paris E. Singer in Support of Motion of Devon Syndicate and Exhibit F attached thereto...	May 1, 1931	14
2. Affidavit of Wendell H. Laidley and certified copy of letters patent incorporating Devon Syndicate, Limited, attached to said affidavit, omitting numbered pages one to five inclusive.	May 1, 1931	19
3. Affidavit for constructive service	Feb. 17, 1936	26
4. Complete return of Marshal of order of attachment	Feb. 26, 1936	28A
(Same as paper 28 asked for in original Praecipe)		

Counter Praeipie

5. Summons on supplemental and amended petition and return thereon Apr. 15, 1936 30
6. This counter praecipe Oct. 14, 1936 57
- Dated October 14, 1936.

Welles, Kelsey & Cobourn,
Attorneys for appellee, Devon
Syndicate, Limited

To Messrs. Fraser, Effler, Shumaker & Winn,
Harold W. Fraser
George R. Effler and
R. G. Swartzbaugh,

Attorneys for plaintiff, Horton C. Rorick.

You are hereby notified that the defendant-appellee in the above entitled action will file forthwith the foregoing counter praecipe indicating the additional portions of the record it desires to have incorporated in the transcript of record on appeal.

October 14, 1936.

Welles, Kelsey & Cobourn.

Service of the foregoing counter praecipe and receipt of copies thereof are hereby acknowledged on behalf of plaintiff-appellant, Horton C. Rorick, this 14th day of October, 1936.

Fraser, Effler, Shumaker & Winn,
Attorneys for plaintiff-appellant.

CERTIFICATE OF CLERK

Northern District of Ohio, ss.

I. F. J. Denzler, Clerk of the United States District Court within and for said district, do hereby certify that the foregoing printed pages contain a full, true and complete copy of the record and all proceedings in this cause, including the petition for appeal, assignment of errors, order allowing appeal, and the bond on appeal, in accordance with the praecipe for transcript, and counter praecipe for transcript, filed herein, the originals of which, except certain exhibits withdrawn by leave of Court, remain in my custody as Clerk of said Court.

There is also attached to and transmitted herewith the citation issued and allowed herein.

In testimony whereof, I have hereunto signed my name and affixed the seal of said court, at Toledo, in said district, this 15th day of December, A. D. 1936, and in the 161st year of the Independence of the United States of America.

F. J. Denzler, Clerk,

(Seal)

By K. V. Wilson, Deputy Clerk.



**PROCEEDINGS IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

CAUSE ARGUED AND SUBMITTED

(November 18, 1938—Before: HICKS, SIMONS
and ALLEN, JJ.)

This cause is argued by R. B. Swartzbaugh for Appellant and by F. E. Fuller and Geo. D. Welles for Appellees and is submitted to the court.

JUDGMENT

(Filed January 11, 1939)

Appeal from the District Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed January 11, 1939)

Before HICKS, SIMONS and ALLEN, Circuit Judges.

SIMONS, Circuit Judge. The question for decision involves the validity of an attachment upon the property of a foreign corporation first sued out in an Ohio court and later sought to be perfected after removal of the cause to the United States District Court. The appeal is from an order discharging the attachment and dismissing the action.

The appellant seeking to recover \$400,000 alleged to be due him under a contract for personal services, filed a petition in the State court against Devon Syndicate, Ltd., a Canadian corporation of Quebec, and Paris E. Singer, a resident of Paris, France, as defendants. Concurrently with the filing of his petition he filed an affidavit in attachment and garnishment, subscribed and sworn to by the appellant before D. W. Drennan, a Notary Public and an attorney in the employ of Spitzer-Rorick & Co., a corporation of which the appellant was president. The summons issued for the defendants was returned with the certification that they could not be found. Orders of attachment were returned unsatisfied, but return was made of service of notices of garnishment on the several garnishees, some of whom thereafter disclosed funds or property in their possession belonging to the defendants. On July 27, 1930, a new affidavit in garnishment and attachment was filed, likewise subscribed and sworn to before Drennan, though no new order of attachment issued thereon. The garnishee defendants were, however, again notified of the attachment and garnishment. On October 10, 1930, the appellant filed an affidavit for constructive service. Publication began on October 11th, and following completion the cause was, on December 5, 1930, removed to the United States District Court.

There, on January 26, 1931, the appellee appeared specially and moved for an order quashing the service of summons and dismissing the attachments and garnishments. On May 1st its co-defendant Singer filed an affidavit in support. Singer subsequently died, and the cause was continued against the present appellee alone. On February 17, 1936, the appellant filed in the District Court a supplemental and amended petition substantially

identical with his original petition, and a direction to the Clerk to issue an order of attachment and garnishment, to be served upon the identical garnishees already served in the State court proceedings. Concurrently he filed a supplemental affidavit in attachment and garnishment sworn to before a Notary other than Drennan. An order of attachment issued to the Marshal and was returned by him to show service of a copy thereof, together with a garnishment notice upon the several garnishees, whereupon on the same date the appellant filed an affidavit for constructive service by publication under the provisions of Ohio General Code, § 11292. On April 11, 1936, the appellee again appearing specially, moved to quash the new summons and to dismiss the second attachment and garnishment.

Upon hearing the court dismissed the attachment upon two main grounds. It held the first two affidavits in support of the writ defective under G. C. Ohio, §§ 11523, 11524, and 11532, the last of which provides,

“The officer before whom depositions are taken must not be a relative or attorney of either party or otherwise interested in the event of the action or proceeding.”

and that they could not be amended by the supplemental affidavit filed in the United States Court. It also held that the attempted attachment and garnishment based upon the supplemental and amended petition in the District Court was void and of no effect because personal service had not been obtained upon the appellee. It directed that the action might remain pending for the purpose of procuring proper service, but being advised that the plaintiff desired no further time or opportunity for obtaining personal service of process, it ordered the petition and supplemental petition to be stricken from the files.

We give little consideration to the first ground upon which the attachment was quashed. While there is persuasion in the argument that under § 11532 the “attorney for either party” who is precluded from taking the acknowledgment is one who represents one of the parties to the controversy in which the affidavit is to be used, and Drennan represented neither, and that officers “otherwise interested” who are foreclosed by the stat-

Opinion

ute are those only who have some legal, material, and immediate interest in the controversy, yet for reasons presently to be discussed, decision upon this point is unnecessary, and since the statute has been amended (G. C. § 11356), will serve no purpose.

Under § 11819 of the Ohio General Code, in a civil action for the recovery of money, an attachment may be obtained against the property of a non-resident defendant "at or after" the commencement of the action. We have recently held, *Doherty v. Cremering, et al.*, 83 Fed. (2d) 388, in reliance upon *Seibert v. Switzer*, 35 O. S. 661; cf. *Henrietta Mining & Milling Co. v. Gardner*, 173 U. S. 123, that an attachment issuing before personal service is obtained, or before the beginning of the publication for substituted service provided for by G. C. § 11292, is premature and void. The case of *Bacher v. Shawhan*, 41 O. S. 271, was there considered and held not to overrule the *Seibert* case, since it did not construe the statute. We are not persuaded that the present cause, insofar as it involves the timeliness of the attachment in the State court, is to be distinguished from the *Cremering* case, or that that case was wrongly decided.

We come then to consider the effectiveness of the appellant's amended and supplemental petition with its accompanying affidavit and attachment in the District Court to create a valid lien on money or property in the hands of the garnishee defendants. It has always been held that an attachment cannot be sued out against the property of a non-resident in a District in which he cannot be sued. When this doctrine was announced defendants could be sued only in Districts of their residence or in which they might be found. Since the attachment is but an incident to a suit, unless the suit can be maintained the attachment must fail. *Ex parte Railway Company*, 103 U. S. 794. When the statute was amended to permit suits in the Federal court in the District of the residence of either the plaintiff or the defendant, it was contended that the District Court of the District of the plaintiff's residence now had jurisdiction to attach a defendant's property found therein. The contention was rejected. *Big Vein Coal Co. of West Virginia v. Read*, 229 U. S. 31, on the ground that the amendment was not intended to do away with the

Opinion

settled rule, but in order to issue an attachment the defendant must be subject to personal service or voluntarily appear in the action, for if Congress had intended any such radical change it would have been easy to have made provision for that purpose.

The suit in the Big Vein Coal Company case was, however, begun in the Federal court; and it is the appellant's contention that the rule there announced does not reach a case removed from the court of a state which permits attachments upon substituted service, and that such attachments are permitted by § 36, Judicial Code, and R. S. 915, being respectively §§ 79 and 726, T. 28, U. S. C. A. The first provides that when any suit shall be removed from a state court to a district court of the United States any attachment in such suit shall hold the goods or estate so attached to answer the final judgment or decree, in the same manner as by law they would have been held to answer the state court judgment or decree. The second provides that in common law causes in the district courts the plaintiff shall be entitled to similar remedies by attachment or other process, against the property of the defendant which are provided by the laws of the State. No decision of the Supreme Court or of a Circuit Court of Appeals has interpreted these sections to permit the Federal court to enforce an attachment not perfected in the state court proceedings, or as setting aside the universally accepted rule that an attachment may not issue in the Federal court until personal service has been had upon the defendant. In the only case to which our attention has been directed, *Cleveland & Western Coal Co. v. J. H. Hillman & Sons Co.*, 245 Fed. 200; the late District Judge Westenhaver of the court below held that an attachment will not lie without personal service on the defendant, which is indispensable notwithstanding R. S. 915, and that a Federal court is without jurisdiction to issue an attachment upon property of defendants not personally served with summons even if the cause be removed from the court of a state which permits it.

Of import is the language of the court in the Big Vein Coal Company case, *supra*: "An attachment is still but an incident to a suit and . . . unless jurisdiction can be obtained over the defendant his estate cannot be attached in a Federal court." In *Hatcher v. Hendrie &*

Opinion

Bolthoff Mfg. & Supply Co., 133 Fed. 267 (C. C. A. 8), it was pointed out by Circuit Judge, later Mr. Justice Van Devanter, that when an action or suit in a state court is removed into a Circuit Court of the United States the latter takes the case in the condition in which it existed in the state court at the time of the removal; and if a lien or other right has been obtained by either party by any proceeding had in the case prior to the removal, power to protect and enforce that lien or right after removal exists in the Circuit Court in like manner as if it had been obtained by a proceeding in that court. The necessary implication is that where a case is removed from a state court without a valid lien having been obtained therein, there is no jurisdiction to perfect an incomplete lien proceeding when the defendant is not brought within the jurisdiction of the court.

The judgment below is affirmed.

**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

I, J. W. MENZIES, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of *Horton D. Rorick v. Devon Syndicate, Ltd.*, No. 7609, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 25th day of January, A. D. 1939.

J. W. MENZIES,

*Clerk of the United States Circuit Court
of Appeals for the Sixth Circuit.*

(SEAL)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 27, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

MICRO CARD 22

TRADE MARK ®



MICROCARD®
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

530

2

38-69

